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MONTANA LEGISLATIVE COUNCIL
STATE CAPITOL
HELENA, MONTANA 59601

BILL DRAFTING MANUAL

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PREFACE

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The first Bill Drafting Manual was written as a staff project by the Legislative Council staff during the 1960 and 1961 interim periods to provide a uniform standard for bill drafting. Its main purpose was to provide the draftsman with a reference source to the requirements of Senate and House rules, statutes, the Constitution, and case law, as well as suggestions on the mechanics, technique, and style of legislative drafting.

Since 1961 the Montana Legislature has changed its rules many times, and it is now operating under a new constitution with a drastically overhauled legislative article. These changes, as well as a new computerized bill-drafting system, rendered the 1961 manual obsolete in many respects.

The second manual was written in 1974. It liberally incorporated the comments on grammar, punctuation, capitalization, and style from the old manual but updated and substantially changed the remainder of the manual.

In 1975 the Legislature created the office of Code Commissioner and mandated a recodification of Montana statutes. The third printing of the manual incorporated the system of punctuation, capitalization, and numbering adopted for the recodification project. The only noticeable change was in the use of numbers.

This fourth printing does not change any existing rules but does add a substantial amount of material. See especially Chapters 3 and 9.

The campaign for clear, concise drafting goes on. Under the general supervision and policy of the Legislative Council, the office of the Code Commissioner is directed by law to continually prepare legislation to clarify, correct, and update the Montana statutes. Careful, studied bill drafting will aid in this vast project.

Professor Reed Dickerson stated in an August, 1978, address to a meeting of the American Bar Association in New York City, "Legal drafting is more than a pedestrian skill; it is a basic professional discipline.... Drafting in its sophisticated sense is one of the most intellectually demanding of all legal disciplines and few lawyers have been adequately trained for it." Realizing that the art of drafting cannot be learned from a manual such as this, our hope is that it will help in a small way with the "management of thought, especially the art of synthesis."

Three words to remember are "omit needless words". As William Strunk, Jr., a Cornell professor, commanded in his

1918 "little book" of 43 pages, The Elements of Style,
"Vigorous writing . . . requires . . . that every word
tell."

By tradition, the legislative process is that by which
the general rules for the direction of human conduct are
consciously and deliberately made. Let's make every word
tell!

September, 1978

Diana S. Dowling
Code Commissioner

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CHAPTER 1

B I L L D R A F T I N G

Policy and the Bill Drafter

Bills may be drafted for diverse persons and groups by various drafters. Some are drafted by the Legislative Council staff at the request of a legislator or committee, some are drafted by counsel to departments of state government, and some are drafted by counsel retained by individuals or groups as legislative proposals. Whatever the position of the drafter, it is his function to translate the objectives and policies of the person or group for whom he is drafting into a clear, concise legislative draft. The drafter must not express his personal thoughts or promote his own interests but must remain an impartial technician. To do otherwise is to risk drafting legislation containing ideas or implications not intended by the person for whom the bill is drafted.

Research and Drafting

Research, organizing, and writing are three steps inherent in all writing. Bill drafting is no exception.

Often a drafter will have the facts sufficiently well in mind so that drafting can be done with little or no research. However, the precision and complexity of the law almost always require research.

The extent of research required depends on the complexity of the drafting problem. Defining that problem is the first step. Determine the exact purpose of the bill and define the problem the proponent wishes to solve.

Analysis of the problem to be solved will enable the drafter to determine the sources he must consult for more information. Sources of information that must be considered by the drafter include the Constitution; existing federal, state, or local statutes; case law; pending law; and applicable federal, state, or local regulations.

Research preparation must be as thorough as time allows. A thorough understanding of the legal and practical factors involved in a bill is necessary to insure a bill that will accomplish the purpose of its proponent. The drafter has a professional obligation to advise the proponent of possible legal or practical problems of which the drafter is aware.

No one can tell the drafter when enough research is done. The drafter must determine when to stop gathering

information and start writing. Judgment must be exercised to avoid wasting time in endless pursuit of unnecessary information.

Organization

Organize the information at hand. Develop an outline that places the elements of the problem in a logical pattern. A bill for only a simple amendment to existing law will present no organizational problem. A major new body of law will require considerable effort to guarantee clarity. Some bill parts are so common that their placement in a bill has been standardized. A drafter must be familiar with the standard bill format discussed in Chapter 5 of this manual before he begins to organize his bill.

Begin to draft the bill when the work is outlined. Rewrite the bill as often as is necessary to achieve clarity, coherence, and unity. Revise the organization of the bill when revision contributes to clarity.

Timesavers

There are several timesavers that may be used in preparing copy for the typist.

(1) Each section of a long bill may be placed on a separate sheet of paper until a cohesive draft is prepared. Sections can then be shuffled and rearranged with ease as research and construction proceed. Ideally, sections should not be numbered and internal references should not be filled in until the final arrangement is reached.

(2) Copies of the current statutes may be taped to draft pages and deletions and new language indicated in red pen on the copy.

(3) Instructions to typist concerning inserts, deletions, underscoring, etc., must be crystal clear.

(4) A list of the introductory clauses used when amending or repealing sections can be given the typist so that the drafter need not write the entire clause each time it is needed. For instance, the drafter may merely write "amend 1-1-101" and the typist will type the proper introductory amending clause "Section 1. Section 1-1-101, MCA, is amended to read as follows:"

(5) At the end of the bill draft write "end" so that typist, proofers, etc. will know it is the end. Often there are copies of background information, preliminary drafts, and/or other assorted documents attached. The typist should not have to spend time sorting through this material to

determine where the bill ends.

Drafting Aids

The following serve as aids in drafting bills:

(1) Other Montana statutes. A bill may be patterned after existing law, even if the existing law is on a different subject. For example, when drafting a bill creating a board to license a particular occupation, the drafter should examine various licensing laws for a suitable model.

(2) Bills introduced in past sessions may be helpful. The subject indexes of Senate and House journals or the Combined Final Status publication may be used to determine whether a bill on a particular topic was introduced in that session and the bill's number. The Legislative Council keeps at least one copy of bills introduced in the most recent legislative session. The office of the Secretary of State has copies of all introduced bills for all past sessions.

(3) The subject index for the current session published by the Legislative Council should be checked to see if an identical or similar bill has been introduced.

(4) Comparison of laws of other states on the same subject is usually very beneficial. In following a law from another state, the drafter must be very careful to make the bill language conform to Montana law.

(5) A list of uniform and model acts and Suggested State Legislation should be checked to see if a uniform act (which is intended to be followed exactly), a model act, or suggested act could be used as a guide.

(6) If time permits, the drafter should consult with experts in the field affected. If the bill affects a governmental or state agency, a conference with an appropriate staff member from the agency is very helpful. If the sponsor permits, a draft of the proposal should be sent to the agency for comment.

(7) See Chapter 9 for a list of constitutional and statutory provisions and legislative rules relating to bills.

Use of Internal Reference List

When amending or repealing a section, a Legislative Council drafter must check the list of internal references. (By utilizing its computer search facilities, the Council

has compiled a list containing each code section number that is referred to by another code section.)

For example, the internal reference list for 7-8-2213 might appear as follows:

REFERENCES TO SECTION 7-8-2213

#1.....007008002214 SEC. BCDY.....7-8-2214.
the county, where the provisions of 7-8-2213 have been
compiled

#2.....007008002308 SEC. BCDY.....7-8-2308.
by tax deed may be sold as provided by 7-8-2213, and
except so
7-8-2213 shall remain in force and effect. Nothing
herein contained shall

#3.....007002202445 SEC. BODY.....7-22-2445.
7-8-2213, and where the district is partly in one
county and partly

#4.....007003402204 SEC. BODY.....7-34-2204.
provisions of 7-8-2213, are hereby legalized and
declared to be

#5.....015004000406 SEC. BODY.....15-4-406.
4% instead of 6% as provided by 7-8-2213 are

If a drafter is amending 7-8-2213, he must read 7-8-2214, 7-8-2308, 7-22-2445, 7-34-2204, and 15-4-406 to determine whether the amendment affects those sections. If a drafter is repealing 7-8-2213, it is mandatory that each of those sections referring to 7-8-2213 be amended to delete the reference.

The drafter must be extremely careful when renumbering subsections within a section. For instance, if the drafter changes 1-1-101(2)(b) to 1-1-101(3)(c), all references in other statutes to 1-1-101(2)(b) are rendered erroneous. When renumbering subsections within a section, the entire section must be read carefully for references to subsections such as "subsection (3)". Such references are not picked up in the internal reference list because the section number does not appear in the reference, only the subsection number appears.

CHAPTER 2

STYLE AND LANGUAGE

Bills should be written in a simple, clear, and direct style, phrased for the common reader as well as for the political or legal expert.

A poorly drafted, ambiguous bill will waste the time of citizens affected, confuse those charged with its administration, lead to litigation, and likely fail to accomplish the purpose of the author. Good drafting requires concise wording that is understandable by a person who has no special knowledge of the subject.

If a paragraph in a bill has to be paraphrased to make it intelligible to the layman, it needs revising. In Montana, the common law tradition has manifested itself in the timeworn, nonessential phrases and rhetorical flourishes found in our legislative enactments. The suggestions contained in this chapter are designed to help the drafter avoid the most common faults in style and language evident in our present law.

As authority for basic rules of writing, the Legislative Council uses the latest edition of the U.S. Government Printing Office Style Manual and the Gregg Reference Manual, Fifth Edition, by William A. Sabin. Compounding of words is done according to the Style Manual.

GRAMMAR

Generally, the ordinary rules of grammar apply to legislative writing; however, in a few instances a departure from common usage is suggested.

Tense

Use the present tense. The law speaks in the present, and each law is designed to give a rule for the continuing present. The present tense is a simple and natural form of expression. "The present tense includes the future as well as the present." (Section 1-2-105(1), MCA)

EXAMPLE
(preferred)

A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal. (Present tense)

(avoid)

A defendant in a criminal action shall be presumed to be innocent until the

contrary shall be proved, and in case of a reasonable doubt whether his guilt shall be satisfactorily shown, he shall be entitled to an acquittal. (Future tense)

Voice

Use the active voice instead of the passive.

EXAMPLE The board shall appoint a director.
(preferred) (Active)

(avoid) A director shall be appointed by the board. (Passive)

The active voice gives the agent, the doer, its logical position before the verb.

Number

Use the singular instead of the plural when possible. "The singular number includes the plural." (Section 1-2-105(3), MCA)

EXAMPLE A defendant in a criminal action is presumed innocent until the contrary is proved. (Singular)
(preferred)

(avoid) Defendants in a criminal action are presumed innocent until the contrary is proved. (Plural)

Articles and Demonstrative Adjectives

"A person who violates" is preferred to "any person who violates", "each person who violates", or "all persons who violate". Consistent use of the articles "a" or "an" results in smoother writing and more precise expression.

There are phrases that require the indefinite article to be omitted, especially after a negative. The negative supercedes the article by including it. An example is "No more expeditious way can be found" not "No more expeditious a way". The extra article should always be avoided such as in "a half an hour". "Half an hour" or "a half hour" is correct.

"Such" or "said", as in "such person" or "said board", should also be avoided. "Said" is archaic and should never be used. Usually "such" can be avoided by referring to "the board", "an institution", "a person", "these laws", etc., or

by employing the appropriate pronoun such as "he" or "it". However, occasionally "such" may be needed to identify the thing to which it refers and should be used if necessary to avoid ambiguity.

Pronouns

Use a pronoun only if its antecedent is unmistakable. A pronoun must agree with its antecedent (the word for which the pronoun stands) in number, gender, and person.

Use a plural pronoun when the antecedent consists of two nouns joined by "and" and a singular pronoun when the antecedent consists of two singular nouns joined by "or" or "nor". When "or" or "nor" joins a singular noun and a plural noun, a pronoun should agree in number with the nearer noun. However, strict application of this rule can distort meaning, so it is usually best to try to make the construction plural.

*EXAMPLE
(confusing)*

The parents or guardian of any person alleged to be developmentally disabled has the right to have the person examined by a professional person of his choice ("his" supposedly refers to "guardian" but could also refer to the developmentally disabled person).

(better)

The parents or guardians of any person alleged to be developmentally disabled have the right to have the person examined by a professional person of their choice.

Gender

Avoid using "he or she" and "his or her" when referring to a person affected by a statute. When consistent with the standards of precision and clarity, use sex neutral words such as "person", "individual", "applicant", "candidate", etc. "Words used in the masculine gender include the feminine and neuter." (Section 1-2-105(2), MCA)

Mood

Use the indicative mood. The drafter should avoid using the false imperative. The word "shall" should not be used to state a legal result or fact.

*EXAMPLE
(preferred)*

The term "commission" means the water commission.

(avoid) The term "commission" shall mean the water commission.

(preferred) A person who violates this act is guilty of a misdemeanor.

(avoid) A person who violates this act shall be guilty of a misdemeanor.

However, the word "shall" should be used in mandatory statutes prohibiting or requiring certain legal acts. Exceptions to this rule are discussed below.

Shall, May, and Must

Generally, if the passive voice is used or the verb is intransitive, "must" or "must not" is preferred. If the active voice is used, "shall" is used as mandatory and "may not" as prohibitory.

EXAMPLE The application must contain the
(preferred) applicant's name.

(avoid) The application shall contain the
 applicant's name.

(preferred) The applicant shall sign the
 application.

(avoid) The applicant must sign the application.

Whenever possible, use "shall" only in an imperative or mandatory sense and "may" in a permissive sense. When a right, privilege, or power is conferred, "may" should be used.

If the power conferred on a public official might be construed by the courts as a duty, the word "may" should be followed by words such as "in his discretion". The Montana Supreme Court in some instances has given a mandatory meaning to the word "may" (State ex rel. Griffin v. Greene, 104 Mont. 460; Hansen v. City of Havre, 112 Mont. 207; Bascom v. Carpenter, 126 Mont. 129, 135, 136). "Where a statute directs that a thing may be done in one manner it ordinarily implies that it shall not be done in any other manner." (Fletcher v. Paige, 124 Mont. 114, 118)

Do not use "shall" to confer a right, because that implies a duty to enjoy the right.

EXAMPLE He is entitled to an annual salary of
(preferred) \$21,000; or,
(preferred) His annual salary is \$21,000.

(avoid) He shall receive an annual salary of \$21,000.

Do not use a negative subject with an affirmative "shall".

EXAMPLE (preferred) No person may

(avoid) No person shall

As explained by Professor Reed Dickerson, "Literally, 'No person shall...' means that no one is required to act. So read, it negates the obligation, but not the permission, to act. On the other hand, 'No person may...' negates also the permission and is, therefore, the stronger prohibition."

Negatives

Do not use "nor" in the same clause with any other negative; use "or" instead.

EXAMPLE (correct) Upon conviction he shall be fined not less than \$25 or more than \$500.

(incorrect) Upon conviction he shall be fined not less than \$25 nor more than \$500.

CAPITALIZATION, PUNCTUATION, AND ABBREVIATION

Capitalization

Capitalization rules for bill drafting represent an exception to standard usage. In drafting bills capitalize as little as possible. Capitalization has no legal significance and the lower case is easier to read and write.

Capitalization is clerically controlled, in accordance with the rules that follow, by the Legislative Council staff when bills are prepared for introduction.

EXAMPLE "5-2-211. The secretary of state shall prepare certified rosters from the official election records on file in his office for use in the organization of the senate and house of representatives."

Because a resolution is usually a more formal document in that the resolution itself is presented or mailed to an agency or party and is not printed in the code, standard

capitalization rules are followed when drafting a resolution. (See Appendix F.)

(1) Capitalize the first word in a sentence. The first words in subsections following a colon must also be capitalized, if the items express complete thoughts and follow a complete sentence.

(2) Capitalize months and days of the week.

(3) Capitalize "Montana" in "state of Montana" but not "state". Capitalize "County" but not "city" in the name of a county or city, such as "Cascade County", "Cascade and Chouteau Counties", or "city of Butte".

(4) Capitalize names of specific persons or places, such as "Rocky Mountains" or "Charles Marion Russell", and specific regions, such as "Pacific Northwest". Capitalize geographic names, such as Boulder River, but not "school" in "Boulder River school". Do not capitalize words that indicate geographic location, such as "northern Montana".

(5) Capitalize names of historic events, such as "World War II", and holidays, such as "Christmas Day" and "Washington's Birthday".

(6) Capitalize references to a statute compilation, such as "MCA" or "Montana Code Annotated", but not "the statutes" or "the codes" or "the constitution". Do not capitalize the words "chapter" or "section" when referring to the code or the constitution, but capitalize the name of a particular title in the code, such as "Title 19, MCA"; the name of an article in the Constitution, such as "Article V, The Legislature"; and a chapter in the session laws, such as "Chapter 5, Laws of 1957".

(7) Capitalize names of races, citizens, and languages, such as "the tribal councils of the respective Indian tribes", "Spanish", or "French".

(8) Capitalize words pertaining to deity, such as "Almighty God".

(9) Capitalize the name of a particular act, such as "Montana Major Facility Siting Act".

(10) Do not capitalize official titles of state, county, or municipal officers, agencies, or institutions, such as "the governor", "the department of highways", "board of county commissioners", or "Montana state university". The same style is used for officers at the federal level, such as "U.S. department of agriculture" or "the president", and national organizations, such as "American red cross".

(11) Do not capitalize class designations, such as "class 1", unless they begin a sentence or are in an upper case designation, such as "Class A-1 fishing license".

Punctuation

Punctuation generally is not considered part of a statute and therefore is subordinate to the text. But courts do look to punctuation to ascertain meaning if the language is unclear. So, besides striving for clear expression through the proper use of words, the draftsman should employ correct punctuation to support the words and avoid ambiguity.

(1) Comma

If a sentence consists of two independent clauses, each with subject and predicate, use a comma before the conjunction.

EXAMPLE

The commission shall report annually to the governor, and it shall cause the report to be printed for public distribution.

An exception to this rule occurs when a sentence starts with a dependent clause that applies to both independent clauses that follow. No comma separates the independent clauses because it would make the introductory dependent clause seem to apply only to the first independent clause.

EXAMPLE

If a conference committee fails to reach agreement or if its report is not adopted by both houses, the governor's recommendation is considered not approved and the bill is returned to the governor for further consideration.

Do not use a comma to separate two predicates joined by a coordinating conjunction.

EXAMPLE

The commission shall report annually to the governor and cause the report to be printed for public distribution.

Enclose a parenthetical phrase or clause with two commas.

EXAMPLE

The report, which must be approved by a majority of the commission members, shall be sent to the governor before July 1 of each year.

When "or" introduces a word or a phrase that identifies or explains the preceding word, set off the explanatory expression with commas.

EXAMPLE Set off parenthetical, or nonessential, elements with commas.

However, if "or" introduces an alternative thought, the expression is not parenthetical and should not be set off by commas.

EXAMPLE The punctuation depends on whether the item is parenthetical or essential.

Words, phrases, or clauses in a series are separated by commas.

EXAMPLE The enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

The use of the comma before the conjunction connecting the last two members of a series is preferable.

EXAMPLE ... wheat, corn, barley, and rye.

Do not set off an essential clause with a comma. An essential clause is one that is necessary to the meaning of the sentence and cannot be omitted.

EXAMPLE (correct) Application must be made by July 1 if a permit is wanted.

(incorrect) Application must be made by July 1, if a permit is wanted.

(correct) No insurer may disburse \$100 or more unless a signed voucher is received.

(incorrect) No insurer may disburse \$100 or more, unless a signed voucher is received.

(2) Semicolon

Use the semicolon between two main clauses not joined by one of the simple coordinating conjunctions (and, but, or, nor, for).

EXAMPLE Letters and other private communications in writing belong to the person to whom they are addressed and delivered; they cannot be published against the will of the writer.

Also use the semicolon to separate two or more coordinate elements, one or both of which contain commas.

EXAMPLE The probation officer in each county shall assist the conciliation court; but the court, with the consent of both parties, may make independent investigations.

The presence of the coordinating conjunction "but" in the second example would permit the use of a comma to separate the two main clauses if there were no commas in the second clause.

Use the semicolon to separate coordinate elements in a series introduced by a colon when those elements are dependent clauses. (See example under "Colon" below.)

(3) Colon

A colon is used most often in legislative drafting to introduce a series, usually in outline form.

EXAMPLE Each policy shall specify:

- (1) the names of the parties to the contract;
- (2) the subject of the insurance; and
- (3) the risks insured against.

A colon also may be used to introduce a long quotation. (See first example under "Quotation Marks" below.)

(4) Parentheses and Brackets

Use commas in preference to parentheses when possible. However, occasionally parentheses will serve to clarify the meaning of a sentence.

EXAMPLE Two or more counties may apply for funds for construction (and operation and maintenance when permitted) under this act.

Do not use brackets as punctuation. Use brackets in a bill to enclose terms, such as "[section 1 of this act]", that will be replaced with a code section number. Also, brackets are used in the Montana code to denote erroneous material or material needing amendment or replacement.

(5) Quotation Marks

In American usage, printers usually place a period or comma inside closing quotation marks whether it belongs logically to the quoted matter or to the whole sentence or context. In bill drafting, clarity is more important than usual, so a period or a comma should be placed outside quotation marks when it does not belong to the quoted matter.

Do not overuse quotation marks. In legislative drafting quotation marks usually are used only to enclose titles or texts of acts or laws referred to or incorporated by reference, to enclose defined words or phrases, or to enclose amended code sections.

EXAMPLE

(1) The state of Montana hereby accepts and assents to the terms and provisions of the act of congress, approved May 8, 1914, entitled "An Act to Provide for Cooperative Agricultural Extension Work".

EXAMPLE

(2) "Game" means game animals and game birds, the killing of which is restricted by the laws of Montana.

EXAMPLE

Section 1-1-218, MCA, is amended to read as follows:

"1-1-218. Construction of words giving joint authority. Words giving a joint authority to three or more public officers or other persons are construed as giving such authority to a majority of them unless it is otherwise expressed in the act code giving the authority."

Abbreviations

Abbreviations are seldom used in legislative writing and should be avoided, except in two instances. "Montana Code Annotated" may be abbreviated to "MCA", and "1 p.m." is preferred to "1:00 o'clock p.m." Do not add "MCA" to a code section number within the text of a section. (See 1-2-108, MCA, which provides that it is presumed the section number refers to the Montana Code Annotated.)

NUMBERS

Numbers one through nine are spelled out and numbers 10 and over are written in numerals, EXCEPT as follows:

Measurements

2 inches (feet, yards, meters, acres, etc.)
2 feet x 3 inches
15 x 30 feet (but a "15- by 30-foot room")
5 pounds (bushels, gallons, etc.)
3 acres (horsepower, etc.)
35 degrees F

Age

6 years old
52 years 10 months 6 days
a 3-year old
65th birthday

"A person who is 18 years of age or older" (not "over 18 years of age").

"A person who is under 6 years of age" or "who has not yet reached his 6th birthday."

"A person who is 18 years of age or older and under 66 years of age" (not "between the ages of 18 and 65").

Time

3 days
1 month
3 fiscal years
noon (not "12 noon")
midnight (not "12 midnight")
9 a.m. (not "9:00 a.m." or "9:00 o'clock a.m.")
1 p.m.
1:30 p.m.

Money

1 cent, 25 cents (up to "99 cents")
\$1, \$25, \$37.50, \$100, \$2,000, \$25,000, \$3 million,
\$1,250,000

Percentages

0.3%
3%, 25%
 $\frac{3}{4}$ of 1%
1/2 of 1% (not "1/2%")

Unit Modifiers

5-day week)
10-year sentence) (measurements)
1-year term)
five-man board (not unit of measurement)
1-, 2-, and 3-year terms (but "term of 5 years")

Ordinals

First through ninth are spelled out; 10th and over are numerals (first term, 35th day).

Fractions

Fractions standing alone or followed by "of a" or "of an" are spelled out, as "one-half day" or "three-fourths of an inch". Mixed fractions are written in numerals, such as "2 1/2 times". (This rule holds true even in measurements, but see exception under "Percentages".)

In a unit modifier, use figures, such as "1/2-inch pipe" (in other words, no double hyphen).

Numbers in Series

Figures are used in a group of two or more numbers when any one is 10 or greater: "The farm has 3 cows and 12 sheep."

Classes and Grades

Use numerals with class or grade designations: "class 1", "class 10", "class 1-A", "grade 1", "grade 12"; but school grades are expressed: "1st grade", "2nd grade", "12th grade".

Dates

Dates should be expressed as follows:

December 31 (not "December 31st" or "31st day of December")
July 12 (not "July 12th")
December 31, 1974, (with comma following year unless at end of sentence)
December, 1974,
October, November, and December, 1974,

A period of time may be expressed as follows: "For the period beginning July 1, 1973, and ending June 30, 1975, ...". Another acceptable expression for a period of time that begins July 1, 1973, and ends June 30, 1975, is: "After

June 30, 1973, and before July 1, 1975,...". When this style is used, there can be no mistake that July 1, 1973, is the first effective date and that June 30, 1975, is the expiration date.

An effective date of July 1 should be expressed as follows: "after June 30, 1973", or "effective July 1, 1973". ("From July 1, 1973", "after July 1", or "between July 1 and" might be construed to mean a beginning date of July 2 and should be avoided.)

It is better to refer to a day rather than to the time an event will occur, such as "90 days after the day on which judgment is entered" not "90 days after the time...". Usually a period is measured in whole days, not the time of day.

General

1,000 (not 1000), 1 million, or 1 billion

Bill Titles and Catchlines

In bill titles, follow the above rules. In catchlines, do not use figures; spell out numbers unless it is a date or a very large number. Words look better than numbers in bold face.

PROVISOS, CASE, CONDITION, AND EXCEPTION

Provisos

Provisos are clauses introduced by "provided, however", "provided that", "provided, further", and "provided, always" and properly should be used only for introducing exceptions or qualifications to the preceding clause. In fact, they are often used improperly to introduce a new idea or a separate statement not necessarily connected with the preceding clause.

The word "provided" has been so overworked in legislative drafting that it has no definite meaning. Little, if any, significance is given to the word "provided". It must be defined by the court before it can be interpreted. "The word 'provided,' when used in a legislative enactment, may create a condition, limitation, or exception to the Act itself, or it may be used merely as a conjunction meaning 'and' or 'before,' and as to what sense the word was used must be determined from the context of the Act." (State v. Bruce, 104 Mont. 500, 516)

It is best to avoid provisos altogether. Introduce an exception or limitation with "except that", "but", or "however"; or simply start a new sentence. If there are many conditions or exceptions, they should be placed in a separate subsection or in a tabulated list at the end of the sentence.

Case and Condition

The case or condition describes the circumstances that must exist before an act becomes operative. Case is sometimes distinguished from condition, but for practical purposes case and condition may be treated as if they were synonymous.

EXAMPLE

If any executor or administrator neglects or refuses to appear and render an exhibit after having been duly cited, an attachment may issue against him.

EXAMPLE

When the deeds or conveyances have been properly recorded, the record is evidence in all courts and has the same effect as the original.

If the circumstances in which the rule is to apply can be stated briefly and simply, they should precede the rule itself. However, if the circumstances in which the rule is to apply involve numerous contingencies or conditions, the general rule should be stated first and the conditions listed in tabular form.

EXAMPLE

(1) No person may hold the office of _____ unless he:

- (a) is a qualified elector;
- (b) resides in the state;
- (c) is 25 years of age or older;
- (d) holds no other elective office; and
- (e) holds no other appointive office for which he is paid compensation from state funds.

Do not state as a command what is merely a condition precedent.

EXAMPLE (preferred)

To be eligible for governor, a person must be a resident of Montana.

(avoid)

The governor shall be a resident of Montana.

The Exception

The exception is used to exempt something from the application of the law and should be stated precisely in order to describe only those persons or things intended to be excepted. The direct statement should include all persons and things to be covered by the rule. If there is a simple exception to the rule, place the exception at the end of the rule.

EXAMPLE

This act applies to all persons except:

(1) persons 65 years of age or older;

(2) persons who have resided in the state for less than 1 year; and

(3) persons who

Or the exception may be placed in a separate subsection and incorporated by reference into the subsection stating the rule.

EXAMPLE

(1) Except as provided in subsection (2) of this section, the board may

(2) This act does not apply to

If, When, Where, or Whenever

The word "where" denotes place only.

If the application of a provision of an act is limited by the single occurrence of a condition that may never occur, use "if" to introduce the condition, not "when" or "where".

EXAMPLE

If the suspect resists arrest, the officer may use force to subdue him.

If the condition may occur more than once with respect to the object to which it applies, use "whenever", not "if", "when", or "where".

EXAMPLE

Whenever the officer receives a call, he must note the time in his report.

If the condition is certain to occur, use "when", not "if", "where", or "whenever".

EXAMPLE

When the statute takes effect, all pending proceedings must be dismissed.

REFERENTIAL LEGISLATION

When drafting bills, avoid incorporating other statutes by reference. Do not make specific references to another title, chapter, part, or section by number unless absolutely necessary. The greatest advantage of such references is that a bill can be less lengthy; however, the pitfalls far outweigh the advantage.

The first problem is that the referenced material must be read in the context of the original act from which it was taken and also in the context of the new act in order to determine meaning. Often there is unforeseen conflict.

The second problem concerns the effect amending or repealing the adopted law has on the statute which adopteded it.

In Sutherland Statutory Construction at 23.32 the author states:

Where a reference statute incorporates the terms of one statute into the provisions of another act, the "two statutes coexist as separate distinct legislative enactments, each having its appointed sphere of action." As neither statute depends upon the other's enactment for its existence, the repeal of the provision in one enactment does not affect its operation in the other statute.

The courts have been consistent in ruling that when a statute adopts another statute by referring to its code section number (a particular reference) the adoption takes the statute as it exists at the time of adoption and does not include subsequent additions, modifications, or repeal of the statute unless it does so expressly or by necessary implication. But when the reference is not to any particular statute but to the law generally which governs a specified subject, the reference is regarded as including the law as it is subsequently amended (Jones v. Dexter, 8 Fla. 276 — where the distinction between particular and descriptive reference was first drawn).

If an internal reference is questioned, the court probably will look at the case individually to determine whether the adopting statute includes by implication subsequent amendment of the adopted statute. Any rule of statutory construction is susceptible to overrule by

"legislative intent". However, the authority in Montana continues to be Gustafson v. Hammond, Irrigation District, 87 Mont. 217, 287 Pac. 640, which held that reference to a statute is as that statute existed at the time of its adoption and subsequent repeal or modification of the statute does not affect the reference to the statute in another statute.

A bill drafter should be aware of the problem and avoid using internal references. If such use is unavoidable, indicate by use of "as amended" whether or not you intend future amendments to the referenced section to be included.

USE OF "THIS ACT"

Avoid use of the words "this act" whenever possible. As discovered during the recodification process, this often creates a problem because the word "act" must be changed to an appropriate term such as "title", "chapter", "part", or "section". It then raises the question of whether or not a subsequent amendment to a section or chapter may be construed to be incorporated into the original "act". Often references to "this act" may be avoided by substituting general language.

EXAMPLE The department may administer all funds appropriated for public assistance purposes.

(preferred) The department may administer all funds appropriated for the purpose of this act.

The preferred language would cover later amendments to the welfare statutes so that there would be no doubt that the intent was to give the department authority over all public assistance funds, not just those covered by the original act.

If it is necessary to refer to a section of the act, enclose the reference in brackets. The Legislative Council inserts the proper code section number after it is assigned.

EXAMPLE The department shall administer the program under the provisions of [section 10 of this act].

CHAPTER 3

BILLS WITH SPECIAL PROVISIONS

Bills with Fiscal Impact

Section 5-4-201, MCA, provides that no bill having an effect on revenues, expenditures, or the fiscal liability of the state may be reported out of committee without a fiscal note attached, which estimates the dollar amount of the fiscal impact.

When a bill is reviewed by the Legislative Council staff prior to introduction, its possible fiscal impact is considered. If a fiscal note is needed, a stamp is affixed to the bill and signed by the Director of the Council. At the time a bill is introduced, the President of the Senate or the Speaker of the House must determine whether the bill needs a fiscal note. The notation of the Legislative Council helps save the presiding officer much time in determining if a fiscal note should be ordered. When he determines the need for a fiscal note, the presiding officer requests it from the Budget Director, who is required by law to return the note within 6 days.

The drafter can simplify the process of judging fiscal impact by keeping the fiscal note requirement in mind when drafting bills and indicating on the bill draft that a fiscal note may be required. If the drafter thinks a fiscal note is needed, he should ascertain the sponsor's intent as to additional budget, staff, etc. needed to accomplish the bill's purpose.

The fiscal note is attached to the bill and the committee considers it with the bill. Should a bill be introduced without a request for a fiscal note, the sponsor, the committee considering the bill, or the majority of the house considering the bill on second reading may request the presiding officer to request a fiscal note.

Section 1-2-112, MCA, is also concerned with fiscal impact. This statute requires that any law directing a local government unit to perform an activity or provide a service or facility that will require additional funds contain a means of financing such activity or service.

Therefore, a drafter must be careful, when drafting bills concerning additional local government services or activities, to include provision for an additional mill levy or remittance of state funds to the local government sufficient to fund the new activity. A local government unit may refuse to administer a law that does not comply with this section.

Bills Granting Rulemaking or Licensing Authority

Section 5-4-404, MCA, enacted in 1977 (Ch. 560), provides that the Legislature must enact a Joint Rule which will set forth a procedure "by which a statement of legislative intent shall be included with each bill containing a delegation of authority and may be included with all bills. A statement of intent shall be placed before each component of the Legislature which sequentially considers the subject bill, and may be amended in the same manner as the bill." It is assumed that the 1979 Legislature will adopt such a rule. Therefore, whenever a bill proposes to give an agency authorization to adopt rules to implement a statute or license (as defined in 2-4-102, MCA) an activity or establishment, the drafter must prepare a statement of intent that can be put in whatever form the Joint Rules require.

The subject matter of rules anticipated by the Legislature should be clearly delineated. The sponsor of the bill, in introducing the bill, will be required to articulate his intentions and purpose as to just how much authority and in what areas the agency is to be allowed any discretion. Each component of the Legislature that considers the bill also will have to consider carefully the statement of intent and confirm it or amend it, as desired.

Bills Creating a New Agency

In the Montana Code Annotated, Title 2, State Government Administration, there is a chapter 15 entitled "Executive Branch Officers and Agencies" which is an updated and more complete version of B.C.M. 1947, Title 82A, Executive Reorganization. This chapter contains a reference to each agency in the executive branch created by statute. The intent of continuing this chapter is that a code user interested in knowing how the executive branch is structured statutorily may see such structure by merely glancing at the outline of chapter 15, Title 2, MCA. Therefore in the MCA, the creation of an agency is separated from the functions of that agency.

Whenever an executive branch agency is created by bill, one or more sections should deal with the creation and internal organization. These sections will be codified in Title 2.

In addition the bill must contain a definition section as follows:

EXAMPLE

In this [act] "board" means the board of dog catchers provided for in [section 3].

"[Act]" will be changed to "chapter", "part", or "sections through ____", as appropriate, and "[section 3]" will become a code section number in Title 2, chapter 15, MCA. The definition section will be codified along with the part of the bill dealing with the functions, powers, and duties of the new agency.

The same rule applies to the creation of any new legislative or judicial branch agency. For example, the composition, terms, and officers of the Environmental Quality Council are provided for in Title 5, MCA, Legislative Branch because the Council is a legislative agency. However, the functions of the Council are codified in Title 75, MCA, Environmental Protection. (See 5-16-101 through 5-16-106, MCA, and 75-1-301 through 75-1-324, MCA.)

Whenever a drafter is dealing with a change of an agency's functions or duties, the statutes relating to the creation and composition of the agency must be checked as well as the substantive area of the law.

Code Placement and Applicability

(1) Placement

The drafter is cautioned not to assign code section numbers to new material because of the possibility of the same number being assigned to more than one section and because logical placement cannot be determined until all the legislation passed during a session is studied as a whole. However, the drafter must decide where he thinks his proposed law should be placed and express this intent by attaching a "proposed code section number" form to his bill draft.

In addition, it may be necessary to express this intent in the bill itself in a section giving instructions to the Code Commissioner to codify the section in a given chapter or part.

EXAMPLE

Section 2. Codification
instructions. The code commissioner
shall codify section 1 of this act in
Title 1, chapter 1, part 1, MCA.

In this case there is no need to bracket "section 1 of this act" because the codification instructions section will not be codified; however, it will appear as a compiler's note to the applicable code section.

(2) Applicability

Often it is not enough merely to specify where a

section must be codified. In many instances, it is vital that the drafter express the intent to incorporate present law into new law.

For example, let us assume the drafter is drafting a bill that relates to a chapter of the code that is arranged as follows:

CHAPTER 1 RINKY DINK AGENCY

Part 1 -- General Provisions

Section

- 1-1-101. Definitions.
- 1-1-102. Rulemaking authorized.
- 1-1-103. Injunction authorized.
- 1-1-104. Penalties.

Part 2 -- Certificates and Permits

- 1-1-201. Certificate or permit required.
- 1-1-202. Application.
Sections 1-1-203 through 1-1-206 reserved.
- 1-1-207. Hearings.
- 1-1-208. Appeals.

The drafter's bill is concerned with findings necessary for issuance of a certificate. After studying chapter 1 carefully, the drafter determines that his one-section bill should be codified as 1-1-203. However, in order to so codify the section, the Code Commissioner may be forced to make additional changes in several sections unless the bill itself shows an intent to incorporate the new law into the present law.

If in our hypothetical chapter, 1-1-101 (Definitions) or 1-1-104 (Penalties) contains language such as "as used in this chapter the following definitions apply" or "Violation of this chapter is a misdemeanor", it would be an error to insert new law into the chapter without excepting it from the definition and penalty sections. Otherwise, mere placement would appear to create a new penalty or define words never contemplated by the legislature.

The drafter should insert a section in his bill, such as the following, to indicate his intent to apply present law to the new law.

EXAMPLE

"Section 2. Application of existing law. Sections 1-1-101 and 1-1-104, MCA, apply to [this act]."

OR

EXAMPLE

"Section 2. Application of existing law. Title 1, chapter 1, applies to [section 1 of this act]."

CHAPTER 4

WORD CHOICE

General Rules

The objective in legislative drafting is to make the final product as precise and understandable as possible. There are hundreds of expressions, legal and otherwise, that can be simplified. In general:

(1) never use a long word where a short one will do;

(2) if it is possible to omit a word and preserve the desired meaning, always omit it; and

(3) never use a foreign phrase, a scientific word, or a jargon word if you can think of an everyday English equivalent.

Remember that the bill must be both precise and clear. The drafter cannot strive solely for simplicity as if it were a single good and there were no other. While striving for unstilted, clear, natural expression, he must avoid becoming conversational. In conversation, the speaker reserves the right to explain his meaning. No such right is granted the one who is writing a bill. The drafter must think; he must know exactly what he wants to state. The entire meaning of a bill could be determined by the choice of one key word, so words must be chosen carefully.

Conversational Verb Construct

An example of the kind of word choice to avoid is the conversational verb construct. This verb form appears most regularly as the combination of an accepted verbal base ("speed") and an accepted preposition ("up"). The resulting formulation ("speed up") is a conversational term unacceptable in bill drafting.

Redundant Adjectives

Avoid adjectives such as "real", "true", and "actual", and adverbs such as "duly" and "properly". Since these ideas are normally implied, expressing them in some instances creates doubt that they are implied elsewhere. (Reed Dickerson, Legislative Drafting, page 87)

EXAMPLE He shall write his age in the
(preferred) appropriate blank.

(avoid) He shall write his actual age in the

appropriate blank.

Consistency

To avoid confusion, the drafter must also be consistent in his use of words. For instance, if he uses "employee" in one section, he should not use "worker" in another section merely for the sake of variety. Also, he should not use the same word to denote different things.

Use of "That" or "Which"

The word "that" initiates a restrictive clause that:

- (1) restricts or limits or describes and defines the word(s) modified; and
- (2) is necessary to identify the word(s) modified.

The meaning of the sentence is not complete without the "that" clause. The clause is not parenthetical, but vital, so commas should not be used to enclose the clause.

EXAMPLE A fence that conforms to 81-4-101 is a legal fence.

The word "which" initiates a nonrestrictive clause that:

- (1) does not restrict the word(s) modified; and
- (2) gives additional, supplemental information about the word(s) modified.

The meaning of the sentence is complete without the "which" clause so commas should be used to enclose the clause.

EXAMPLE A fence, which may be a legal fence according to 81-4-101, must be built within 30 days of receiving the permit.

Words to be Avoided

The left-hand column of the following list includes some words and phrases that should be avoided unless there are special reasons to the contrary. Some are flowery, some are archaic, and some are vague; all lack the precision needed for clear expression. The words in the right-hand column are those which the average reader understands more readily.

AVOID

USE

absolutely null and void and of no effect	void
aforesaid; aforementioned; beforementioned	the; that; those (see "hereinafter")
afforded or accorded	given
and/or	either X or Y or both of them; X and Y or either of them
any and all	(either word)
at such time as	when
at the time of his death	when he dies
attorney- and counselor- at-law	attorney
be and the same is hereby	is
bonds, notes, checks, drafts and other evidences of indebtedness	evidence of indebtedness
bring an action	sue
carry out	execute; complete
constitute and appoint	appoint
deal with	address; conduct
deem	consider
does not operate to	does not
due to	because
during such time as	while
during the course of	during
each and all	(either word)
employ (meaning to use)	use
enter into a contract with	contract with
every person; all persons	a person
evidence, documentary or otherwise	evidence

evince	show
examine witnesses and hear testimony	take testimony
expend	spend
fail, refuse, or neglect	fail
feasible	practicable; workable
formulate	make
for the duration of	during
for the purpose of	for
for the reason that	because
forthwith	immediately
from and after	after
full and complete	full
full force and effect	force; effect
give consideration to	consider
give recognition to	recognize
have knowledge of	know
have need of	need
he or she; his or her	he, his (or refer to the subject, "the licensee", "permit-holder", etc.)
hereafter hereinafter; hereinbefore; hereinabove; above; below; of following; preceding	after this act takes effect (these are objectionable when referring to the position a section or other statutory provision; if reference is necessary, specify the chapter, part, section, or subsection by number)
in case	if
in cases in which	when; whenever; if
in order to	to
in the event that	if

inquire	ask
in sections 1-1-101 to 1-1-143, inclusive	in 1-1-101 through 1-1-143
institute	begin; start
is able to	can
is applicable	applies
is authorized to	may
is binding upon	binds
is defined and shall be construed to mean	means
is dependent on	depends on
is directed to	shall
is empowered to	may
is entitled to	may
is hereby authorized and it shall be his duty to	shall
is hereby vested with power and authority and it shall be his duty in carrying out the provisions of this act to	shall
is required to	shall
is unable to	cannot
it is his duty to	shall
it is lawful to	may
law passed	law enacted
legislative assembly	legislature
make application	apply
make payment	pay
make provision for	provide for
matter transmitted through the mail	mail

maximum	most
means and includes	means; includes (as required)
member of a partnership	partner
minimum	least
modify	change
necessitate	require
none whatever	none; no
not later than	before
null and void	void
occasion (verb)	cause
of a technical nature	technical
on or after	after
ordered, adjudged, and decreed	ordered
or, in the alternative	or
party	person (unless referring to party to a suit or action)
per annum	a year
per centum	percent
per day	a day
per foot	a foot
period of time	period; time (as required)
person of suitable age and discretion	adult (or state age)
prior to	before
prosecute its business	conduct its business
provided (conjunction)	if; but
provided, further; provided, however; provided that	except; but; however (or start a new sentence)

provision of law	law
purchase	buy
render (meaning to give)	give
retain	keep
rules and regulations	rules; regulations
said	the; that; thcse
same	it; he; him
shall have the power to	may
sole and exclusive	exclusive
speed up	hasten; expedite
subdivision; clause; paragraph	subsection
subsequent to	after
such	(do not use if an article may be used)
terminate	end
the place of his abode	his residence
to wit	(this is verbiage; delete it or use "namely")
under the provisions of	under
unless and until	unless; until (as required)
until such time as	until
utilize	use
whatscever	whatever
whenscever	when; if; whenever
wherescever	where
whosoever	whoever
whomscever	(archaic; improper)

CHAPTER 5

THE BILL AND ITS PARTS

A bill is a proposed law as introduced in the Legislature. The bill does not become a law (an "act", "statute") until passed by the Legislature and signed by the Governor or passed over his veto. If the Governor does not sign or veto a bill, it becomes a law within 5 days after its delivery to him if the Legislature is in session or within 25 days if the Legislature is adjourned.

A bill that has become a law is delivered to the Secretary of State who assigns a chapter number to it in the order the bill is received by his office. All laws that pass in any one legislative session are first published in the order of passage in a 2-volume publication entitled Laws of Montana (Year) (Session Laws). All permanent new provisions are assigned code section numbers by the Code Commissioner and are incorporated into the Montana Code Annotated. (A code is merely a systematic arrangement of the laws.)

The proper form and arrangement of a bill has been defined primarily by custom. The Montana Constitution speaks of bill titles in Article V, section 11; and 5-4-101, MCA, prescribes the form of the enacting clause. None of the other bill parts are mandated by law or rule. However, the following form is now used by the Legislative Council; and by legislative rule all bills, before they are introduced, must comply with the format, style, and legal form prescribed by the Council. Bills not prepared by the Legislative Council must be reviewed by the Council staff and entered on the automated bill drafting equipment before introduction. This equipment and procedure are further explained in Chapter 9.

BILL ARRANGEMENT

(* - a mandatory part of a bill)

1. Bill Identification*

- (a) Legislative Council number
- (b) designation and number
- (c) sponsor line

2. Title*

3. Preamble

4. Enacting Clause*

5. Body*

- (a) short title
- (b) purpose section
- (c) definitions
- (d) basic provisions
- (e) penalty
- (f) saving clause
- (g) severability clause or nonseverability clause
- (h) repealer
- (i) effective date

EXPLANATION OF BILL PARTS
(See Appendix M for forms)

Bill Identification

(1) Legislative Council Number

The number appearing at the top right-hand corner of a bill, such as "LC 0001", is the number assigned by the Council staff as the bill request is received. The LC number is used to identify the bill during the drafting process prior to the time of introduction and assignment of a bill number.

(2) Designation and Number

The blank preceding the words "BILL NO." is used to identify the bill as a House or Senate bill, and the blank following is used to number the bill. The blanks are filled in manually by the Chief Clerk of the House or Secretary of the Senate at the time of introduction.

(3) Sponsor Line

The second line of a bill is used to identify the sponsor. The sponsor signs the bill in the blank prior to introduction (or the name of the committee sponsoring the bill is entered). If there is more than one sponsor, the chief sponsor signs first. The Joint Rules provide that if a bill is introduced by request of a state agency that fact shall be indicated by inserting "By Request of _____" following the names of the sponsors.

LC 0001

EXAMPLE BILL NO. _____
(bill
identification) INTRODUCED BY _____
BY REQUEST OF _____

Title

(1) General

The title identifies the bill to the legislators and the public and must summarize clearly the contents of the bill. The drafter should be familiar with the substantial body of case law which has developed over defects in titles.

Article V, section 11(3), of the Montana Constitution provides:

Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

The main purpose of the constitutional provision is to insure that the title of a bill gives reasonable notice of the content to legislators and the public. It also prevents multisubject legislation from being passed by the combined votes of the advocates of separate measures, when no single measure could be passed on its own merits.

Title challenges under this section of the constitution may be brought either on the grounds (1) that the title contains more than one subject or (2) that the title does not express clearly the subject of the bill, or both.

It is not always easy to distinguish between these two parts of the constitutional requirement. Most of the Supreme Court decisions deal with the clear expression of subject requirement or with an indistinguishable mixture of both requirements.

The Montana Supreme Court has considered the sufficiency of title question more than 65 times. The drafter should read these cases, which are listed in Shepard's Citations, in order to more fully comprehend title drafting problems. Under the 1972 Constitution, if a law is challenged as having a defective title, the action must be brought within 2 years after the effective date of the law.

(2) Exceptions to Sufficiency of Title Provision

As stated in Article V, section 11(3), general appropriation bills and bills for the codification and general revision of the laws are exempt from the unity of subject and clear expression of subject rules.

(3) General Appropriation Bills

In order to fall within the exception, an appropriation bill must be a general appropriation bill; that is, it may embrace nothing but appropriations for "the ordinary

expenses of the legislative, executive, and judicial branches, for interest on the public debt, and for public schools." (1972 Constitution of Montana, Article V, section 11(4)) Further, the incidental provision of an appropriation bill must be germane to the appropriation if it is to fall within the exception. The Court has held that provisions relating to the expenditure of the money appropriated or its accounting may be included in an appropriation bill without being mentioned in the title, even when the provisions had the effect of amending or repealing general statutes (State v. Ford, 115 Mont. 165, 171). However, in Helena v. Ohlolt, 155 Mont. 212, the Court said, "... appropriation bills should not be held to amend substantive statutes by implication. ... Such tactics are recognized as exceedingly bad legislative practice." (The appropriation bill in question contained a section which was irreconcilable within an existing statute; and the lower court had held that the appropriation measure, being a later bill, impliedly repealed the earlier statute.)

(4) Codification and General Revision

In State v. District Court, 49 Mont. 146, 150, the Court said that a bill whose plain purpose was to revise the laws on a particular subject, as well as an omnibus revision bill covering many subjects, is within the revision exception.

In the past, the Court has found that certain bills come within the codification or general revision exception although the titles do not specifically claim the bills are such. The Court has never found a bill not within the exception when the title indicated that the bill was a codification or revision.

If a bill is intended to be a codification or general revision, the title should so state.

EXAMPLE

"AN ACT FOR THE CODIFICATION AND GENERAL REVISION OF LAWS RELATING TO PUBLIC SCHOOLS."

(5) Including List of Amended or Repealed Sections in Title

There is diversity of opinion as to whether or not reference by number only to a code section to be amended or repealed is sufficient in a title. However, all authorities agree that the title is sufficient if the number of the section to be amended or repealed and an indication of the subject matter of the amendment or repeal are included in the title. "Reference in the title of the amendatory Act to the subject matter of the section to be amended need not be so comprehensive as to constitute a complete index to or abstract of the section. All that is required in such case is a reasonable degree of certainty as to the statute to be

amended.'" (State v. Duncan, 74 Mont. 428, 437)

Therefore, the title of a bill should indicate the general purpose of the amendment, as well as list the code sections amended or repealed.

EXAMPLE

"AN ACT TO AMEND SECTIONS -----,
RELATING TO THE GENERAL FISCAL DUTIES OF
THE STATE TREASURER."

If there are numerous sections to be amended, a better method is to set out the purpose of the amendment first and then list the sections to be amended.

EXAMPLE

"AN ACT TO AMEND THE LAWS RELATING TO
SALE OF LANDS FOR TAXES BY COUNTY
TREASURERS; AMENDING SECTIONS
-----; REPEALING SECTIONS
-----."

If the bill is a general revision or codification bill, it is not necessary to list all affected sections in the title.

EXAMPLE

"AN ACT TO GENERALLY REVISE AND RECODIFY
THE LAWS RELATING TO AERONAUTICS."

If a bill repeals a section, the title should indicate the subject matter and list the section number.

EXAMPLE

"AN ACT TO REPEAL SECTION 1-1-202, MCA,
WHICH DEFINES REGISTERED MAIL."

Preamble

The preamble follows the title and precedes the enacting clause. Because of its placement, it does not become a part of the law and is rarely used. It is a preliminary statement of the reasons for the enactment of the law and begins with the word "Whereas".

PREAMBLE
(optional -
rarely used)

WHEREAS, the Montana constitution requires that all executive and administrative offices and instrumentalities of the executive department of state government be allocated by law among not more than 20 departments

Enacting Clause

The enacting clause, which is prescribed by law, separates the identification portion of the bill from the body of the bill.

*ENACTING
CLAUSE
(mandatory)*

BE IT ENACTED BY THE LEGISLATURE OF THE
STATE OF MONTANA:

Short Title

A short title is not suitable for all enactments; but when an act creates new law in a definable area, a short title enables quick future identification. When used, the short title appears as section 1 of the bill.

SHORT TITLE

Section 1. Short title. This [act] may be cited as "The Executive Reorganization Act of 1971".

Purpose Section

A well drafted act should not require an extraneous statement within itself, such as a purpose section, to recite reasons for its enactment or what it seeks to accomplish. However, if it is necessary to express the reason prompting enactment or the policy or purpose of an act, first consider the preamble, which does not take up space in the code because it is not part of the act itself but which may be used in its interpretation. If a purpose section is preferred to a preamble, it becomes a part of the law. The purpose should be stated concisely at the beginning of the bill following the enacting clause or short title if there is one. If a purpose section is necessary, it should be carefully and thoughtfully drafted. (See also the discussion of bills granting rulemaking or licensing authority in Chapter 3.) A purpose section is not always merely window dressing. Courts have relied on purpose sections to construe unclear and ambiguous language.

Definitions

(1) To avoid repetition and to assure clarity, a well-drafted bill often contains a definition section which precedes the basic provisions of the bill. A definition section is of definite advantage to:

(a) define a general term in order to avoid its frequent repetition, such as "'Employee deductions' means all authorized deductions made from the salary and wages of an officer or employee of a state agency";

(b) avoid repeating the full title of an officer or of an agency, such as "'board' means the board of natural resources and conservation";

(c) give an exact meaning to a word that has several dictionary meanings;

(d) define a technical word that has no popular

meaning in commonly understood language; and

(e) limit the meaning of a term that, if not defined, would have a broader meaning than intended.

(2) (a) Do not define a word if it is used in the sense of its ordinary dictionary meaning.

(b) Certain words are defined in Title 1, chapter 1, MCA. If a word is used in the same sense as it is defined in that chapter, it is unnecessary to define it again in a bill. There are also definition sections that apply to entire titles, such as 45-2-101 (Criminal Code), 72-1-103 (Probate Code), and 19-3-104 (PERS), MCA.

(3) The drafter should adhere scrupulously to normal usage of a term. If it is necessary to use a fiction, it should be so labeled.

EXAMPLE

Do not say: The word "automobile" includes trucks, power boats, and airplanes.

Say: In this chapter, trucks, power boats, and airplanes are treated as if they were automobiles.

(4) Whenever possible, especially if there are more than three definitions, they should be arranged alphabetically.

(5) Do not include substantive provisions in definition sections.

(6) After a word is defined, use the defined word, not the definition.

(7) If there are definitions already in the code that you want to apply to your bill, draft a section so stating. Do not repeat the definitions. (See a discussion of this in Chapter 3.)

DEFINITIONS

Section 3. Definitions. As used in this [act], the following definitions apply:

(1) "Board" means the board of natural resources and conservation, provided for in 2-15-3302.

(2) "Department" means the department of natural resources and conservation, provided for in Title 2, chapter 15, part 33.

(3) "Person" means an individual, association, partnership, corporation, estate, or any other similar entity.

Basic Provisions

A bill that only amends or repeals existing laws may not present any organizational problem; sections of the Montana Code Annotated usually are amended in numerical order. However, an act which creates a new body of law must be thoughtfully organized. From the standpoint of organization, bills containing all new material are of three types, those which contain:

(1) one main provision supported by subordinate provisions;

(2) several related main provisions, some of which have subordinate provisions; or

(3) a series of related and equal provisions all dealing with one subject.

(1) One Main Provision

Most new legislation is concerned with just one main idea and falls within the first type. Generally, the substantive provisions of an act will be followed by the authority which is to administer it, and then by the means to make it effective.

EXAMPLE

Section 4. Registration of tramways required. No passenger tramway may be operated in this state unless it has been and continues to be registered with the board... ("core" or substantive provision).

Section 5. Powers and duties of the board. The board shall:

(1) adopt rules related to public safety ...;

(2) hold hearings in all matters relating to the exercise ...; and

(3) issue to the applying operator the registration certificates required for each passenger tramway ... (administrative authority and procedures. Do not include unnecessary procedural provisions that are already contained in the Administrative Procedure Act or Court Rules.).

Section 6. Remedies to enforce compliance. If an operator fails to comply with an order or rule of the board, the board may:

(1) suspend or revoke the registration of the tramway...;

(2) bring injunctive proceedings (administrative enforcement procedure).

(2) Several Related Main Provisions

Each main provision with its related subordinate divisions should be separate from the other main provisions and drafted in detail as if it constituted the entire bill.

(3) Series of Related and Equal Provisions

Bills containing equal provisions relating to a common subject are arranged in a logical order if one suggests itself. Otherwise, the bill is arranged in an arbitrary order.

New Material -- Catchlines

Provisions used to create new law in an area not covered by present statutes are referred to as "new material". The basic provisions of a new law should be divided into sections, each of which contains one idea or thought.

Each section must begin with a caption or "catchline". In the past, catchlines usually were added by the codifier, but the present rule is to add a catchline during the drafting process. (Should a bill pass through the legislative process without catchlines, the Legislative Council staff will add the catchlines prior to enrolling the bill.) The catchline should be as brief as possible and clearly show what the section topic is. If the drafter feels that the catchline must be quite long to cover the meaning of the section, the section itself is probably too broad. If more than one thought is set forth in a catchline, each thought is separated by a dash.

In new material, internal references to other sections of the bill should be bracketed. The Code Commissioner will insert the proper code section number before the code is printed. See Chapter 3 for a discussion of how the placement of new material in the code is determined.

NEW MATERIAL

Section 4. Department head -- appointment -- powers and duties.
(1) The governor shall appoint each

department head.

(2) Each department head shall supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department in accordance with [section 20].

Amendatory Material

Sections of a bill amending present law usually are arranged in numerical order by code section number. There must be a separate bill section for each code section amended. The brief, simple amending clause should be used. ("Section ----, MCA, is amended to read as follows:") The Joint Rules provide that, "In sections amending existing statutes, matter to be stricken out shall be indicated with a line through the words or part to be deleted, and new matter shall be underlined." This means that new material added to an existing code section is underlined; new material that will become an entirely new code section is not underlined.

AMENDATORY
MATERIAL
(amending a
code section)

Section 5. Section 2-17-301, MCA,
is amended to read as follows:

"2-17-301. Supervision of mailing facilities. The ~~controller~~ department shall maintain and supervise any central mailing facilities."

The Joint Rules also provide that, "No law shall be revised or amended, or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended or extended shall be reenacted and published at length." The question of whether a subsection may be amended without setting out the entire parent section at length has never been adjudicated in Montana. (Ease of amendment is just one more reason for dividing new law into short, concise sections.) At present the computerized updating of the statute data base requires that an entire section be amended, not just a subsection.

If it is necessary to amend an act passed earlier in the same session, it is wise to refer to the chapter number to indicate clearly that you intend to amend a new law or one that has been amended already in the present session. The following form is used:

AMENDATORY
MATERIAL
(amending a
session law)

Section 1. Section 3, chapter 4,
Laws of 1979, is amended to read as
follows:

"Section 3. Section 70-32-103,
MCA, is amended to read as follows:

'70-32-103. From what it may be selected. If the claimant be is married, the homestead may be selected from the property of the husband either spouse."

(The Secretary of State assigns chapter numbers to the laws after they are signed by the Governor - Section 5-11-204, MCA.)

Designating New Material Mixed with Amendatory Material

When a bill contains two or more sections amending present statutes and, in the midst of the amendatory sections, contains a section with all new material, it is necessary to call this to the attention of the Legislature. When a legislator is reading several sections containing underlining or deletions, he tends to read only the underlined or deleted material. Unless attention is called to new material in the midst of such amendatory material, the new material is often overlooked as a section of the code that is not being amended. The former method of beginning such amendatory sections with the phrase, "There is a new R.C.M. section that reads as follows" did not seem to alleviate this problem.

At the time this is being written, the Legislative Council is experimenting with the use of a stamp in the left hand margin of the bill that would appear as follows:

DESIGNATING NEW MATERIAL
(mixed with amendatory
material)

NEW
MATERIAL

The drafter should not use an introductory phrase for new material, but only give it a bill section number. (See page 74.)

Assigning a New Section Number

As a rule, the drafter should avoid assigning code section numbers in a bill because:

(1) it may violate the "must be set forth at length" rule for amending a law. By giving a bill section a code number, the drafter in effect is adding a section to a chapter and thereby "extending" that chapter. A joint rule requires that any law that is extended must be set forth at length. It could therefore be argued that in order to assign a new section number the entire chapter in which that section will appear must be set forth at length;

(2) if all sections of a bill are assigned code section numbers and one of the bill sections is deleted by amendment during the legislative process, the entire bill must be renumbered (something committees usually forget to do), leaving a gap in the numbering format of the final bill; and

(3) it is impossible for the legislature to insure that identical code section numbers are not assigned to more than one bill or that numbers are assigned logically in regard to all introduced legislation.

Unless the drafter feels it absolutely mandatory to assign a code section number, this should be left to the Legislative Council staff. The Council uses section number indexes to avoid duplication of numbers. The drafter may indicate that a section should be codified within a certain chapter or part.

EXAMPLE
(designating code placement) Section 29. Allocation. The code commissioner shall codify sections 2 through 10 of this act in Title 33, chapter 10, part 2.

If it is absolutely necessary to assign a code section number, the following form should be used:

ASSIGNING A NEW SECTION NUMBER Section 7. There is a new MCA section numbered 7-7-102 that reads as follows:
(discouraged - use only if necessary) 7-7-102. Jurisdictional area -- county planning. (1) The

Outline Form

There is no rule fixing the length of a section. Generally, a section should include only a single idea. The shorter the section the more quickly it may be understood and the easier it is to amend when amendment is needed. If the drafter finds it difficult to phrase a brief caption (catchline) for the section, it is likely that there are too many ideas in the section. Each paragraph in a bill should be given a section or subsection designation. Outline order for sections and subsections is as follows:

- (1)
- (2)
- (3)
- (a)
- (b)
- (c)
- (i)
- (ii)
- (iii)

- (A)
- (B)
- (C)

Sections or subsections are indented except when the (1) follows the catchline. If there is a phrase or sentence following the catchline which ends with a colon and is followed by a (1), that (1) is indented.

EXAMPLES

22-1-101. Duties of board. (1) The board shall adopt rules related to public safety

(2) The board shall hold hearings

22-1-101. Duties of board. The board shall:

(1) adopt rules related to public safety;

(2) hold hearings; and

(3) arrange all meetings.

If material preceding a colon is a complete thought and each of a numbered (and indented) series can stand alone, the first letter is capitalized and the sentence ends with a period. Otherwise the first letter is in lower case and the sentence ends with a semicolon. If some but not all of the first letters must be capitalized (for instance, "Montana"), try to rearrange those phrases so that they begin with a lower case word.

EXAMPLES

4-1-101. Definitions. As used in this part the following definitions apply:

(1) "Bonds" includes all instruments representing indebtedness, the borrowing of money, or a charge on specific revenue.

(2) "Public body" means any political or governmental subdivision of the state of Montana.

4-1-101. Budget amendment. An approved budget amendment is an approval by the budget director of a request submitted through the budget division to:

- (1) obtain financing;
- (2) transfer excess funds; or
- (3) increase the appropriation.

If possible, include all identical language in the section in the lead-in phrase before the colon. Do not repeat it in each subsection.

*EXAMPLES
(identical
language in
(1)(a)-(c)
redundant)*

17-7-201. Building and construction defined. In this part the following definitions apply:

- (1) "Building" includes a:

(a) building, facility, or structure constructed or purchased wholly or in part with state moneys;

(b) building, facility or structure at a state institution;

(c) building, facility, or structure owned or to be owned by a state agency, including the department of highways.

- (2) "Building" does not include a:

(a) building, facility, or structure owned or to be owned by a county, city, town, school district, or special improvement district;

(b) facility or structure used as a component part of a highway or water conservation project.

(3) "Construction" includes construction, repair, alteration, and equipping and furnishing during construction, repair, or alteration.

*(preferred
style)*

17-7-201. Building and construction defined. In this part the following definitions apply:

(1) "Building" includes a building, facility, or structure:

(a) constructed or purchased wholly or in part with state moneys;

(b) at a state institution;

(c) owned or to be owned by a state agency, including the department of highways.

(2) "Building" does not include a:

(a) building, facility, or structure owned or to be owned by a county, city, town, school district, or special improvement district;

(b) facility or structure used as a component part of a highway or water conservation project.

(3) "Construction" includes construction, repair, alteration, and equipping and furnishing during construction, repair, or alteration.

Be extremely careful when inserting subsections. Often a meaning can be altered substantially if subsection numbers are carelessly inserted. See the following example. The mathematical computation is entirely different in the two versions.

*EXAMPLES
(wrong)*

The holder may charge an amount equal to the difference between:

(1) the refund required under 31-1-242; and

(2) the refund required for payment in full as of 1 month prior to the due date times the number of months in which no payment is made.

(right)

The holder may charge an amount equal to the difference between the refund required under 31-1-242 and the refund required for payment in full as of 1 month prior to the due date, times the number of months in which no payment is made.

Renumber and Amend

The same problems exist for renumbering sections as for assigning code section numbers. However, it is sometimes necessary - especially in recodification and general

revision laws - to retain the legislative history of certain statutes and move them into a revised package. The renumber and amend form is used if the present statute must be amended and transferred to a new position within the code.

RENUMBER
AND AMEND

Section 8. Section 45-1-103, MCA, is renumbered 30-2-103 and is amended to read as follows:

"~~45-1-103~~ 30-2-103. Penalty for violation of law. Any person, firm, or corporation violating"

Renumber

When it is necessary to transfer a code section without change to fit within a new law or existing law, the renumber form is used. However, renumbering should be avoided unless considered absolutely necessary by the drafter. It is a method for retaining the legislative history but often leads to difficult and confusing research.

RENUMBER

Section 9. Section 45-1-104, MCA, is renumbered 30-2-104.

An alternative that allows the Code Commissioner more flexibility after examining all new laws and their interrelationship is to direct the placement within a certain part of the code without assigning a certain number.

EXAMPLE
(designating
code place-
ment)

Section 9. The code commissioner shall recodify 45-1-104 so that it appears in the same title, chapter, and part as sections 1 through 8 of this act.

Penalty

If a violation of an act is to result in a penalty, a separate section is devoted to setting forth the penalty. The wording of this section is patterned after that used in the Montana Criminal Code of 1973.

PENALTY

Section 10. Penalty. A person convicted of violating 1-1-101 shall be fined no more than \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

Saving Clause

Because normally it is presumed that changes in the law are in full force from the effective date, new laws often could disrupt transactions already in progress. The saving clause preserves rights and duties that already have matured

or proceedings that already have begun.

SAVING CLAUSE

Section 11. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

If a criminal statute is repealed, unless the act itself contains language to the contrary, 1-2-205, MCA, applies. It provides that the repeal of a law creating a crime does not bar prosecution for or punishment of an act already committed in violation of that law.

Another method of preserving rights and duties that have matured is to choose a date upon which the persons coming within the act must comply with its operative provision.

EXAMPLE

Section 11. Act operative on January 1, 1973. A certificate is not required under [section 10] for any facility under construction or in operation on or before January 1, 1973.

Severability Clause

If a statute is found to be unconstitutional or invalid in part, the court must decide if the invalid portion is severable from the valid portion and looks to legislative intent. The Montana Supreme Court has held that inclusion of a severability clause in a bill creates a presumption that the valid portions of a bill would have been enacted without the invalid portions (Bacus v. Lake County, 138 Mont. 69; 354 P2d 1056, 1083) and thus only the invalid portions are voidable. As a rule severability clauses are not codified.

*SEVERABILITY
CLAUSE*

Section 12. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Nonseverability Clause

In the rare instance that the sponsor intends that the entire act should fall if one of the provisions is declared unconstitutional, a nonseverability clause may be added.

NONSEVERABILITY CLAUSE

Section 12. Nonseverability. It is the intent of the legislature that each part of this act is essentially dependent upon every other part; and if one part is held unconstitutional or invalid, all other parts are invalid.

Repealer

It may be necessary to repeal one or more statutes that conflict with a new act. Each statute to be repealed must be identified. If more than three consecutive code sections are to be repealed, the drafter may use the word "through" to indicate the series.

A statement that "all acts or parts of acts in conflict herewith are repealed" is improper and ineffective.

Whenever a bill repealing a section is drafted, the same bill must amend any other section in the code containing a reference to the section being repealed. The Legislative Council has a complete listing of all internal references.

REPEALER

Section 14. Repealer. Sections 1-1-101 through 1-1-106 and 3-4-102, MCA, are repealed.

Effective Date

Section 1-2-201(1), MCA, provides that "Every statute, unless a different time is prescribed therein, takes effect on July 1 of the year of its passage and approval." Passage and approval means when signed by the Governor or when automatically a law if not signed within the prescribed time. An effective date should not be included in a bill unless the sponsor wants to delay the effective date or there is an emergency requiring an early effective date. An effective date before July 1 may deprive the general public of sufficient notice and deprive administrators of the act of sufficient time to prepare procedures for the new act.

EFFECTIVE DATE

Section 14. Effective date. This act is effective on its passage and approval.

CR

Section 14. Effective date. This act is effective December 1, 1979.

CHAPTER 6

S P E C I A L T Y P E S O F B I L L S

Revenue Bills

The 1889 Constitution provided that revenue bills be introduced in the House. The provision was deleted from the 1972 Constitution. Under the 1889 Constitution the Court construed this provision to mean bills relating to the raising of money for defraying the expenses of the general government (Morgan v. Murray, 134 Mont. 92) and not to those incidentally creating revenue. Bills imposing tax or license fees to enforce policing regulations were not considered revenue-raising measures. It is possible that the Joint Rules will be amended to again require revenue bills to be introduced in the House but at this writing there is no such rule.

Validating Bills

A validating bill is used to cure any irregularities in actions, proceedings, or transactions carried out under authority of existing law. A bond validating act is passed each session by the Montana Legislature. This type of bill may be used to validate other types of actions (such as approval of plats, distribution of revenues according to a prior census, petitions for creation of districts, etc.), as long as it does not impair the obligation of contracts or disturb a vested right.

In the past, bond validating acts have broken all rules concerning style and language in legislative drafting. It is not necessary to continue to use archaic, flowery language. See Appendix K for a sample validating act.

Interstate Compacts

An interstate compact is a contract among several states that is enacted into law in each contracting state. A compact must be enacted in substantially the same form in each party state. As an example the drafter may inspect the several interstate compacts adopted by Montana, such as the Driver License Compact (61-5-401, MCA), Compact on Juveniles (41-6-101, MCA), Library Compact (22-1-601, MCA), and Mental Health Compact (53-22-101, MCA).

Uniform or Model Acts

(1) Uniform acts are prepared by the National Conference of Commissioners on Uniform State Laws and generally are intended to be followed exactly. The purpose of a uniform act is to cover an area of law by a method that will avoid conflicts among the laws of different states. An example is the Uniform Reciprocal Enforcement of Support

Act, Title 40, chapter 5, part 1, MCA.

(2) Model or "suggested" acts are prepared by the drafting committee of the Council of State Governments and by other persons and organizations and are intended as guides for legislation in which uniformity is not necessary. A model act is essentially a suggested method for handling a given area of law by providing guidelines within which a state may substitute sections to accommodate local peculiarities. An example is the Montana Business Corporation Act, 35-1-101, MCA, et. seq. Copies of the publication Suggested State Legislation by the Council of State Governments are available in the Legislative Council library.

Appropriation Bills

The Montana Constitution, Article V, section 11 (4), requires every appropriation other than general appropriations for the operation of government to be "made by separate bill, containing but one subject". The large general appropriation bills covering the usual expenses of state government are prepared in accordance with a predetermined format. Since such format is not decided by statute, it may change at any time. The Legislative Fiscal Analyst has proposed the following form for appropriation bills in the 1979 session.

*EXAMPLE
(appropriation)*

Section 10. Appropriation. There is appropriated \$20,000 to the department of social and rehabilitation services, economic assistance program, for the biennium ending June 30, 1979, from revenues collected under the authority of _____.

The Montana Supreme Court has held that an appropriation may be part of a nonappropriation bill (and not violate the unity of subject rule) if the appropriation is incidental to the single subject of the bill (Hill v. Rae, 52 Mont. 378 and State v. State Board of Education, 97 Mont. 132). For example, if a bill creates a governmental agency or program, a section of the bill appropriating money to fund the program would be proper. However, the most recent (and probably the safest) practice has been to create the new entity and provide for necessary administrative procedures, etc. in one bill and appropriate the necessary money therefor in a separate bill.

Constitutional Amendments

Article XIV, section 8, of the Montana Constitution provides for constitutional amendment by legislative referendum. The proposed amendment must receive an affirmative vote by two-thirds of the Legislature before it

is referred to the people. Article VI, section 10, provides that bills proposing amendments to the Montana Constitution need not be submitted to the Governor for his signature. Title 13, chapter 27, MCA, contains the general law relating to procedures to be followed by the Secretary of State and other officials when submitting a constitutional amendment (and other ballot issues) to the electorate. Article XIV, section 8, provides that, unless the amendment provides otherwise, the amendment will become effective on July 1 following certification of the election returns.

Referenda

The Montana Constitution, Article III, section 5, provides that the people may approve or reject any act of the Legislature except an appropriation of money. The Legislature may order a proposed law to be voted upon by the people, or the people may petition to so vote. An "act" does not include a joint resolution ratifying an amendment to the U.S. Constitution (Hatch v. Murray, 31 St. Rep. 753).

Section 13-27-313, MCA, provides that the Attorney General must approve the form of the referendum ballot. When the Legislature orders an act to be referred to the people, the Secretary of State sends a copy of the proposed law to the Attorney General (13-27-310, MCA) so that the Attorney General may write his explanatory statement of the measure. At the same time the Secretary of State asks the Attorney General to approve the ballot form, which is usually prescribed in the act ordering the referendum.

Usually, the last section of a bill for a referendum is the section ordering a vote of the people. See Appendix L for a sample referendum bill.

CHAPTER 7

R E S O L U T I C N S

The only type of instrument other than a bill that may be introduced in either house of the Legislature is a resolution.

Simple Resolution

The Joint Rules define a simple resolution as a formalized motion passed by one house only. It may be used to amend the rules of one house or to provide for the internal affairs of the house adopting it. A simple resolution does not require three readings or a roll call vote as does a bill or joint resolution.

Joint Resolution

The Joint Rules state that a joint resolution may be used to express a desire, an opinion, sympathy, or a request of the Legislature; to amend the Joint Rules; to ratify or propose amendments to the United States Constitution; or to direct changes to, repeal, or direct adoption of a rule in the Montana Administrative Code.

A joint resolution is effective upon passage by both houses and need not be submitted to the Governor for his signature (Montana Constitution, Article VI, section 10). Some common uses of joint resolutions are to:

(1) send a request or instruction to a state agency, Congress, or the President;

(2) express sympathy to relatives of a deceased legislator;

(3) amend or adopt joint rules;

(4) express support for or disapproval of federal legislation;

(5) prescribe duties, compensation, etc., of legislative employees; and

(6) repeal, amend, or direct addition of rules in the Montana Administrative Code in accordance with 2-4-412, MCA. The use of a joint resolution to amend an agency's administrative regulation is based upon the theory that rulemaking is a legislative function delegated to the agency. The Legislature can control the discretion of its agent by means of the joint resolution. (Unlike bills and other joint resolutions, an Administrative Code resolution may be introduced and transmitted at any time during the session.)

Resolutions should be used only for proposals having none of the mandatory characteristics of law. In Gildroy v. Anderson (30 St. Rep. 389; 507 F2nd 1069) the Court said, "The effect and validity of a joint legislative resolution must be decided upon a consideration of the purpose intended to be accomplished and in light of the applicable provisions of the Montana Constitution." The Court went on to say, "A joint resolution is not a general law and cannot be used to control the discretion of the governor."

The format of resolutions has been prescribed by custom. In resolutions other than those proposing amendments to the Administrative Code, it would seem that even the unity of subject rule need not be followed, since the resolution does not have any binding effect. Customary formats are presented in the appendix and must be followed by the drafter.

The preamble of a resolution is identical to the preamble of a bill. It usually begins with "WHEREAS" and states the purpose of or reason for the resolution.

In a resolution, a resolving clause takes the place of the enacting clause of a bill. In the past, the body of a resolution has consisted of one or more paragraphs, each beginning with the statement "BE IT FURTHER RESOLVED". The drafter may wish to number the paragraphs rather than continue to repeat the rather flowery, archaic language as shown in the appendix as an alternative.

Standard capitalization rules are followed when drafting a resolution. (See page 10).

CHAPTER 8

AMENDMENTS

Bill amendments are prepared by the Legislative Council staff, committee secretaries, lobbyists, or the legislators themselves. Printed forms are available for use by the standing committees and the committees of the whole. The first draft of an amendment to be presented to the committee should be typed on plain white paper. If the amendment is made by a committee, it is presented in a Standing Committee Report, as shown below.

The amendment must identify the specific copy of the bill to be amended, i.e., introduced (white), second reading (yellow), third reading (blue), or reference (engrossed) bill (salmon).

Reminders When Amending Bills

(1) Amend the title if the amendment to the bill requires change in the title.

(2) Watch the catchline and amend it too, if necessary.

(3) If subsection numbers are changed, read the entire bill for internal references to the former subsection numbers.

(4) If additional sections are being repealed, be sure to check the Internal Reference List. (See discussion on page 4).

(5) Check the entire bill for any references to terms or figures that are being changed or provisions that are being deleted.

(6) Do not forget that Article V, section 11, of the Montana Constitution, states that no bill shall be so altered or amended on its passage through the Legislature as to change its original purpose.

Substitute Bill

If the proposed amendment is extensive, it may be easier to rewrite the entire bill. This is called a substitute bill. The Joint Rules provide that, if the amendment is relevant to the title and subject matter of the original bill and is so extensive that a standard amendment would be long and difficult to comprehend, the bill may be amended by striking all of the bill following the enacting clause and substituting an entirely new bill.

Amendment Language Samples

(1) Amend title

Title, lines 5 through 7.
Following: "A PERSON"
Strike: remainder of lines 5 through 7
in their entirety
Insert: "WHO HAS SERVED HIS SENTENCE"

(2) Insert material only

Page 1, line 23.
Following: "statement"
Insert: "in simple language"

(3) Insert material following stricken (dashed cut) material

1. Title, line 7.
Following: "\$5"
Strike: "four percent (4%) of the payment due"
Insert: "4%"
2. Title, line 10.
Following: "12%"
Insert: "12%"

(4) Insert material and renumber

(all new material)

1. Page 1.
Following: line 9
Insert: "Section 1. Temporary minimum wage of police. For the period beginning July 1, 1979, and ending June 30, 1980, each confirmed member of a police department of first- and second-class cities is entitled to a minimum wage for daily service of 8 hours' work of \$700 a month. After June 30, 1980, the minimum wage of a member of a police department shall be as provided in 7-32-4116, as amended."
Renumber: all subsequent sections

(new material and assigning number)

2. Page 4.
Following: line 1
Insert: "Section 2. There is a new MCA section numbered 39-31-304 that reads as follows:
"39-31-304. Nothing in this chapter requires or allows boards of trustees of school districts to bargain collectively

upon any matter other than matters
specified in 39-31-305.""
Renumber: subsequent section

3. Page 4.

Following: line 3

Insert: "Section 3. Section 53-6-205,
MCA, is renumbered 2-6-102 and is
amended to read as follows:

"~~53-6-205~~ 2-6-102. Departmental
reports to legislature. The department
~~and the department of institutions~~ shall
achieve full implementation of the
provisions of the act, as set forth in
this chapter and related sections, no
later than January 1, 1980."
Renumber: all subsequent sections

(5) Strike and insert columnar figures in appropriation bills

1. Page 12, line 20.

Strike:	"45,000	47,000"
Insert:	"44,954	46,955"

(6) Strike material only

1. Page 1, line 22.

Strike: "by"

(If there is only one "by" in line 22.)

2. Page 2, line 24.

Following: line 23

Strike: "agency"

3. Page 2, line 23.

Following: "public,"

Strike: "the"

(If there is more than one "the" in the
line; if not use form 1 above)

4. Page 5, line 16.

Strike: "dcctor, lawyer, ACCOUNTANT,"

(Show material to be stricken exactly as
it appears in the bill. There is no need
to show material that has already been
stricken. For example, this bill might
have read, before amendment, "doctor,
lawyer, engineer, ACCOUNTANT".)

(7) Strike certain lines in their entirety

1. Page 1, line 21 through line 1 on page 2.
Following: "trespass"
Strike: line 21 on page 1 through line 1
on page 2 in their entirety
Insert: "."

(8) Strike a long passage, section, or subsection in its entirety

1. Page 4, line 11.
Strike: section 3 in its entirety

2. Page 2, line 24 through line 15 on page 3.
Strike: subsection (e) in its entirety
3. Page 1, line 21 through line 5 on page 2.
Following: "act" on line 21
Strike: line 21 through "day" on line 5,
page 2

(9) Strike and renumber subsequent sections or subsections

1. Page 19, lines 1 through 2.
Strike: section 10 in its entirety
Renumber: all subsequent sections

2. Page 3, line 21 through line 2 on page 4.
Following: line 20
Strike: line 21 on page 3 through line 2
on page 4 in its entirety
Renumber: subsequent subsections

3. Page 2, line 15.
Strike: "(A)"
Insert: "(1)"
Renumber: subsequent subsections
accordingly

(10) Strike and replace a section or subsection

1. Page 12, lines 5 through 21.
Strike: section 13 in its entirety
Insert: "Section 13. Section 1-1-101 is
amended to read as follows:
"1-1-101. Definition of laws. "Law" is a
...."

2. Page 12, lines 5 through 21.
Strike: lines 5 through 21 in their entirety
Insert: "(c) A person who violates this section is guilty of a misdemeanor."

(11) More than one amendment on the same line

1. Page 12, line 23.
Following: "registrant"
Insert: "or licensee"
Following: "proper"
Strike: "inspection"

(12) Correct capitalization

1. Page 13, line 12.
Following: line 11
Strike: "the"
Insert: "The"

(13) Correct punctuation

1. Page 18, line 10.
Following: "desires"
Strike: ";"
Insert: / ";"

(14) Amend a bill as a substitute bill: strike all of the bill following the enacting clause

1. Title, lines 5 through 15.
Following: "An Act"
Strike: lines 5 through 15 in their entirety
Insert: "TO PROVIDE THAT A PERSON CONVICTED OF A CRIMINAL OFFENSE WHO HAS SERVED HIS SENTENCE AND IS NO LONGER UNDER STATE SUPERVISION MAY BE GRANTED THE PRIVILEGE OF OCCUPATIONAL LICENSURE; DEFINING LICENSURE AS A PRIVILEGE."

2. Pages 1 through 52.
Strike: all of the bill following the enacting clause
Insert: "Section 1. Purpose. It is the public policy of the legislature of the state of Montana to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship. The legislature finds that the public is best protected when such offenders are given the opportunity to secure employment or to engage in a

meaningful occupation, while the privilege of licensure must be conferred with prudence to protect the interests of the public.

Section 2. Licensure defined as privilege. It is the intent of the legislature and the declared policy of the state that occupational licensure is a privilege to be granted or revoked as a police power of the state in its protection of the public health, safety, and welfare, and such privilege is not a right mentioned in Article II, section 28, of the Montana constitution.

Section 3. Restoration of rights to felons. Laws for the punishment of crime shall be founded on the principles of prevention and reformation, and full rights shall be automatically restored upon termination of state supervision for any offense against the state.

Section 4. etc.

Standing Committee Report

(Examples)

(Senate)

Date _____

Mr.

Ms. _____ (President)

We, your committee on (Highways), having had under consideration Senate Bill No. (123), respectfully report as follows: That Senate Bill No. (123), second reading (yellow), be amended as follows:

(House of Representatives)

Date _____

Mr.
Ms. _____ (Speaker)

We, your committee on (Highways), having had under consideration House Bill No. 11231 entitled ("AN ACT AMENDING SECTION 61-8-207, MCA, TO AUTHORIZE RIGHT TURNS AT INTERSECTIONS ON RED OR STOP SIGNALS"), respectfully report as follows: That House Bill No. 11231, secnd reading (yellow), be amended as follows:

Conference Committee Report

If the Senate and House cannot agree on an amendment (or series of amendments), either house may request a Conference Committee. The format of Ccnference Committee reports is determined by the Rules Committee. Several amendments to the format are being recommended for the 1979 session.

The recommendation of the Code Commissioner is that the following format be followed:

(Example)

Date _____

JOINT CONFERENCE COMMITTEE REPORT NO ____.

ON HOUSE BILL NO. 11

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Joint Conference Committee on House Bill No. 11, met March 18, 1979, and considered:

1. Senate Committee on Judiciary Amendments dated March 5, 1979, and

2. Senate Committee of the Whole Amendments dated March 9, 1979.

We recommend that:

1. the Senate recede from Committee amendment numbers 1 through 3 and the House accede to Committee amendment

numbers 4, 6, 7, and 8;

2. the Senate recede from Committee of the Whole amendment number 1 and the House accede to Committee of the Whole amendment numbers 2 and 3.

3. House Bill No. 11, reference (engrossed) copy be amended as follows:

1. Page 5, lines 4 through 17.
Strike: section 6 in its entirety
Insert: "Section 6."; and

4. House Bill No. 11, as amended, be concurred in.

FOR THE HOUSE:

(Chairman's Name)

(Name)

(Name)

FOR THE SENATE:

(Chairman's Name)

(Name)

(Name)

CHAPTER 9

S E L E C T E D P R O V I S I O N S R E L A T E D T O B I L L D R A F T I N G

The following is a list of Constitutional, statutory, and Joint Rule provisions of which a bill drafter should be knowledgeable.

Montana Constitution

Article II. Declaration of Rights

- Section 5. Freedom of religion
- Section 7. Freedom of speech, expression, and press
- Section 18. State subject to suit
- Section 31. Ex post facto, obligation of contracts, and irrevocable privilege

Article III. General Government

- Section 5. Referendum

Article V. Legislature

- Section 11. Bills
- Section 12. Local and special legislation

Article VI. The Executive

- Section 10. Veto power

Article VIII. Revenue and Finance

- Section 1. Tax purpose
- Section 2. Tax power inalienable
- Section 6. Highway revenue nondiversion
- Section 8. State debt
- Section 9. Balanced budget

Article XIII. General Provisions

- Section 1 (3). No retrospective law

Article XIV. Constitutional Revision

- Section 8. Amendment by legislative referendum

Montana Code Annotated

Title 1 -- General Laws and Definitions, especially:

Chapter 1, part 2 -- General Definitions Used in Code
Chapter 2 -- Statutory Construction
Chapter 11 -- Publication and Updating of Code

Title 2, chapter 4, part 4 -- Legislative Review of
Administrative Rules

Title 5, Chapter 4 -- Legislative Procedures

Title 13, chapter 27 -- Ballot Issues

Rules of the Montana Legislature

Joint Rules, Chapter 6. Bills and Resolutions

COMPUTERIZED BILL DRAFTING

The Legislative Council utilizes two major integrated computerized systems for research and bill drafting. The research system is called SIRS (Statutory Information Retrieval System). It consists of the full text of the Montana Constitution and the Montana Code Annotated on a computer disc. Research can be accomplished in a fraction of the time formerly required because the computer determines the precise location by section and sentence of every key word in the code. For instance, a drafter can frame a search on the computer to print out every section of the code containing the word "governor" and have the list in seconds. The Legislative Council utilizes CRT terminals (similar to television screens) in searching the code.

Framing a Search

Because the computer cannot think for itself, it is important, when considering whether or not to request a search, that the searcher have a good idea of the words or phrases the legislative drafter might have used to express the concept being searched. For example, if the search is for all sections of the code providing statutes of limitations, that phrase actually may never be used. Instead, the drafter might have said, "suit shall be brought within 6 years", or "if the cause of action is not sued upon within 6 years it is barred", or even "the period of limitations is 6 years." Similarly, a search for sections that define criminal conduct might include the following: "felony", "misdemeanor", "fine", "may be fined", "may be imprisoned", "punishable by", "it shall be unlawful to ...", "guilty", "upon conviction of ...", and possibly "crime", "criminal", or "offense".

Words may be used in senses other than the one to be searched. For example, a drafter might wish to search for material relating to arrest or search warrants. A search of the word "warrant" alone would include not only search and arrest warrants, but warrants issued by the State Auditor, warrants of resurvey, stock warrants, and the verb form "if conditions warrant".

Some concepts are nearly impossible to search for, such as "conflict of interest". One can imagine how many ways a drafter might phrase provisions in this area.

Other concepts are so narrow in scope that all references are likely to appear in one title. If a person is looking for all references to gambling or lotteries, he assumes that these will all be in one title or in the Constitution. (A search should not be undertaken if he knows this to be a fact.)

The Planning and Economic Development Division of the Department of Community Affairs is responsible for framing a search through this system for other state agencies and the public and charges a fee therefor.

Drafting System

The bill drafting system is called ALTER (Automated Legal Text Entry and Revision). It is a computerized, telecommunications-based text editing system that permits many different text input, editing, and formatting activities to be carried out concurrently through the use of typewriter and CRT terminals connected to a computer. Text entered at the terminal by an operator is automatically assembled into documents which can be retrieved, amended, corrected, or deleted at computer speeds. Line width, page depth, and tab settings become integral parts of each document.

If a bill amends present statutes, the statute sections are retrieved from the SIRS data base. By means of special two-character format control codes, selected text can be automatically overstricken, underscored, and/or capitalized at printout time. The standard material in a bill, such as the bill identification, enacting clause, and introductory clauses are automatically formatted by retrieving specified documents that are stored for the use of all operators. Page numbering and sequential numbering of section catchlines are other automatic formatting facilities used. When input of the bill is complete, it is stored and need never be typed or proofed again. It can be retrieved for amending, engrossing, or enrolling. Because only the amendments need to be entered and proofed, the terminal operator and proofers are relieved of completely retyping and reproofing the now-amended bill. The same bill may be amended several times using the same procedure. Bills can be printed out by the Legislative Council printer at 80 lines a minute or at a maximum speed of 600 lines per minute at the Data Processing Bureau.

Photo-composition

From the enrolled bill in storage, a program of the ALTER system will produce a magnetic tape which will interface with photo-composition equipment and prepare camera-ready copy to print the session laws and the Montana Code Annotated without further typesetting or proofing required.

CHAPTER 11

C L E R I C A L I N S T R U C T I O N S

Bills prepared by persons not on the Legislative Council staff are submitted to the staff for review and typing on the automated bill drafting equipment before introduction. Therefore, it is not mandatory that bills be presented to a legislator in perfect form, although this certainly expedites the procedure.

General Instructions

(1) Use 8-1/2 x 11 inch paper with 25 double-spaced lines.

(2) Double space the entire bill, including the title.

(3) Use pica type and a good black ribbon.

(4) Use a 55-space line.

(5) Only one copy is needed for Council use.

(6) Indent all sections, subsections, and sub-subsections just five spaces, with the second line of each beginning at the left margin.

(7) Number each page, except page 1, centered at the bottom of the page, one double space below line 25, as follows: -2-

(8) Bills should be neat, but since they will be retyped by the Council, corrections are allowed.

(9) Material to be stricken from present law is typed and then dashed out, using the hyphen. Material to be added to present law is underscored.

(10) When proofreading, make certain that numbers of all sections amended or repealed in the body of the bill appear in the title. If a statute is being amended, proofread the bill against the current version in the Montana Code Annotated. New bills should read exactly as the present code does (including all punctuation), with matter to be stricken dashed out and new material underlined.

APPENDIX A
SAMPLE -- PREAMBLE

1

BILL NO.

2

INTRODUCED BY _____

3

4

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY AND PROPERLY
COMPOSE SECTION 61-8-718, MCA, RELATING TO VIOLATION OF THE
55-MILE-AN-HOUR SPEED LIMIT."

5

6

WHEREAS, in the 1974 legislative session section
61-8-718 was enacted as Chapter 60 in the Laws of Montana,
1974; and

7

8

WHEREAS, in the same legislative session, Senate Bill
743 was introduced to amend Chapter 60 by providing fees for
justices of the peace; and

9

10

WHEREAS, Senate Bill 743 as drafted did not correctly
reflect the contents of Chapter 60 because it added the
words "not to exceed" in subsection (1) and omitted
subsection (3) entirely but did not show the new material
underlined or the omitted material as deleted; and

11

12

WHEREAS, it was the intent of the legislature to amend
section 61-8-718 only by adding the fees for justices of the
peace and not in any other manner, as is shown by the title
to Senate Bill 743, appearing as Chapter 248, Laws of
Montana, 1974.

13

14

15

THEREFORE, it is the intent of this bill to direct

1 proper composition of section 61-8-718 because it does not
2 now appear in its proper form.

3

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

5 Section 1. Section 61-8-718, MCA, is amended to read
6 as follows:

7 "61-8-718. Enforcement. (1) A person violating the
8 speed limit imposed pursuant to ~~section--t--of--this--act~~
9 ~~(61-8-712)~~ is guilty of the offense of unnecessary waste of
10 a resource currently in short supply and upon conviction
11 shall be fined ~~not-to-exceed~~ \$5 and no jail sentence may be
12 imposed. Bond for this offense shall be \$5.

13 (2) For the purpose of this ~~act chapter~~ only, the fees
14 of the justice of the peace shall be \$4 to be remitted as
15 set forth in 3-10-603.

16 (3) No violation of this ~~act chapter~~ may be recorded
17 or charged against the driver's record of a person convicted
18 of violating this ~~act chapter~~, no insurance company may hold
19 a violation of this ~~act chapter~~ against the insured, and
20 there may be no increase in premiums because of a violation
21 of this ~~act chapter~~."

-End-

APPENDIX B
SAMPLE -- BILL WITH ALL NEW MATERIAL

1

BILL NO.

2

INTRODUCED BY

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE AND DIRECT
5 THE DEPARTMENT OF REVENUE, IN COMPUTING THE RETAIL SELLING
6 PRICE OF LIQUOR, TO DESIGNATE AND ESTABLISH A LESSER RETAIL
7 SELLING PRICE ON ALL LIQUOR MANUFACTURED, DISTILLED,
8 RECTIFIED, BOTTLED, OR PROCESSED IN MONTANA THAN IS
9 DESIGNATED AND ESTABLISHED FOR LIQUOR IMPORTED FROM WITHOUT
10 THE STATE."

11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Price of liquor made in Montana. In
14 computing the selling price of all liquor sold and delivered
15 by the Montana department of revenue, the department shall
16 establish the state markup on all liquor either
17 manufactured, distilled, rectified, bottled, or processed in
18 Montana at 10% less than the amount of markup on products of
19 out-of-state manufacturers, distillers, rectifiers,
20 processors, or bottlers.

-End-

APPENDIX C
SAMPLE -- BILL WITH AMENDATORY MATERIAL

1 BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
5 CLARIFY SECTIONS 23-1-101 AND 23-1-106, MCA."

6

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8 Section 1. Section 23-1-101, MCA, is amended to read
9 as follows:

10 "23-1-101. Purpose. That--for ~~For~~ the purposes of
11 conserving the scenic, historic, archaeologic, scientific,
12 and recreational resources of the state, and of providing
13 for their use and enjoyment, thereby contributing to the
14 cultural, recreational, and economic life of the people and
15 their health, the department of fish and game commission--is
16 vested--with ~~has~~ the duties and powers hereinafter set forth
17 in 23-1-106."

18 Section 2. Section 23-1-106, MCA, is amended to read
19 as follows:

20 "23-1-106. Rules and---regulations---penalties. The
21 commission shall have power to department may make rules and
22 regulations governing the use, occupancy, and protection of
23 the lands and property under its control. Any person who
24 violates any such rule or regulation shall be deemed guilty
25 of a misdemeanor and punished by a fine of not more than one

APPENDIX D
SAMPLE -- BILL WITH AMENDATORY AND NEW MATERIAL

1

BILL NO.

2

INTRODUCED BY

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THE PUBLIC
5 SERVICE COMMISSION WITH THE AUTHORITY TO ENCOURAGE ENERGY
6 CONSERVATION THROUGH REVISIONS OF UTILITY RATE
7 CLASSIFICATIONS; DIRECTING THE COMMISSION TO REVISE SUCH
8 RATES; AMENDING SECTION 69-3-306, MCA."

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 69-3-306, MCA, is amended to read
12 as follows:

13 "69-3-306. Classification of service. 11 The
14 commission may shall prescribe classifications of the
15 service of all public utilities, and such classifications
16 may must take into account and reflect the quantity used,
17 the time when used, and any other reasonable consideration
18 the effect of differential pricing on the demand for the
19 service, the effect of differences in demand on the economy
20 and the environment of the state, procedures to mitigate the
21 adverse distribution effects of incentive pricing, and other
22 considerations relevant to the energy-conserving interest of
23 this chapter."

24 Section 2. Study and order for rate structures. The
25 commission shall study the structure and classification of

NEW
MATERIAL

1 the rates charged by public utilities engaged in the
2 distribution of energy, including electricity and natural
3 gas. The commission shall complete this study within 1 year
4 of [the passage and approval of this act]. The study shall
5 consider and evaluate the effects of existing and
6 alternative rate structures and classifications upon the
7 demand for energy and level of consumption of energy in
8 Montana.

-End-

APPENDIX E
SAMPLE -- BILLS FOR CONSTITUTIONAL AMENDMENT

1

BILL NO. _____

2

INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO SUBMIT TO THE
5 QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE V.
6 SECTION 6, OF THE MONTANA CONSTITUTION TO PROVIDE THAT THE
7 LEGISLATURE SHALL MEET IN ANNUAL SESSIONS."

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Article V, section 6, of the Montana
11 constitution is amended to read as follows:

12 "Section 6. Sessions. The legislature shall meet--each
13 odd--numbered--year--in--regular-session-of-not-more-than-90
14 legislative-days be a continuous body for 2-year periods
15 beginning when newly elected members take office. Any
16 business, bill, or resolution pending at adjournment of a
17 session shall carry over with the same status to any other
18 session of the legislature during the biennium. The
19 legislature shall meet at least once a year in regular
20 session of not more than 60 legislative days. Any
21 legislature may increase the limit on the length of any
22 subsequent session. The legislature may be convened in
23 special sessions by the governor or at the written request
24 of a majority of the members."

25 Section 2. Submission to electorate. When this

1 amendment is submitted to the qualified electors of Montana,
2 there shall be printed on the ballot the full title of this
3 act and the following words:

FOR annual sessions.

4 AGAINST annual sessions.

-End-

APPENDIX E
SAMPLE -- BILLS FOR CONSTITUTIONAL AMENDMENT

1 BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO SUBMIT TO THE
5 QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE II,
6 SECTION 18, OF THE MONTANA CONSTITUTION TO PROVIDE THAT THE
7 LEGISLATURE MAY DETERMINE WHEN THE STATE OR ITS SUBDIVISIONS
8 MAY NOT BE SUED."

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Article II, section 18, of the Montana
12 constitution is amended to read as follows:

13 "Section 18. State subject to suit. The state,
14 counties, cities, towns, and all other local governmental
15 entities shall have no immunity from suit for injury to a
16 person or property, except as may be specifically provided
17 by law by a two-thirds vote of each house of the
18 legislature. This provision shall apply only to causes of
19 action arising after July 1, 1973."

20 Section 2. Effective date. If approved by the
21 electorate, this amendment shall be effective July 1, 1975.

22 Section 3. Submission to electorate. This amendment
23 shall be submitted to the electors of the state of Montana
24 at the general election to be held November 5, 1974, by
25 printing on the ballot the full title of this act and the

1 following:

- FOR allowing the legislature to determine sovereign immunity.

AGAINST allowing the legislature to determine sovereign immunity (for continuing to prohibit sovereign immunity).

-End-

APPENDIX F
SAMPLE -- JOINT RESOLUTION

1 JOINT RESOLUTION NO. _____

2 INTRODUCED BY _____

3

4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF MONTANA URGING MOTORISTS TO
6 DRIVE WITH THEIR HEADLIGHTS ON DURING THE DAYTIME.

7

8 WHEREAS, hundreds of Montanans lose their lives in
9 traffic accidents each year; and

10 WHEREAS, one out of every five traffic accidents on the
11 open highway is the result of a head-on collision; and

12 WHEREAS, etc.

13

14 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
15 OF REPRESENTATIVES OF THE STATE OF MONTANA:

16 That members of the motoring public of Montana be
17 encouraged to drive with their headlights on low beam in the
18 daytime to deter head-on collisions on the open highway.

19 BE IT FURTHER RESOLVED, that the Secretary of State
20 send copies of this resolution to the publisher of each
21 newspaper in the state.

22 BE IT FURTHER RESOLVED, that this resolution, etc.

-End-

APPENDIX F
ALTERNATIVE JOINT RESOLUTION

1 JOINT RESOLUTION NO. _____

2 INTRODUCED BY _____

3
4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF MONTANA URGING THE MOTORISTS
6 TO DRIVE WITH THEIR HEADLIGHTS ON DURING THE DAYTIME.

7
8 WHEREAS, hundreds of Montanans lose their lives in
9 traffic accidents each year; and

10 WHEREAS, one out of every five traffic accidents on the
11 open highway is the result of a head-on collision; and

12 WHEREAS, etc.

13
14 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
15 OF REPRESENTATIVES OF THE STATE OF MONTANA:

16 (1) That members of the motoring public of Montana be
17 encouraged to drive with their headlights on low beam in the
18 daytime to deter head-on collisions on the open highway.

19 (2) That copies of this resolution be sent by the
20 Secretary of State to the publisher of each newspaper in the
21 state.

22 (3) That this resolution, etc.

-End-

APPENDIX G
SAMPLE -- JOINT RESOLUTION
(Directing a Rule to be included in the
Montana Administrative Code --
General Terms)

1 JOINT RESOLUTION NO. _____

2 INTRODUCED BY _____

3

4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE
6 ADOPTION OF A NEW RULE IN THE MONTANA ADMINISTRATIVE CODE
7 GOVERNING THE RETAIL PRICES OF ALCOHOLIC BEVERAGES CHARGED
8 BY THE LIQUOR DIVISION, DEPARTMENT OF REVENUE.

9

10 WHEREAS, the state of Montana sells liquor under a
11 monopoly for the purpose of raising revenue for the state
12 through the profits realized from the sales; and

13 WHEREAS, the Department of Revenue is authorized to
14 operate the liquor monopoly, to fix, under Section 16-1-302,
15 MCA, the prices at which various brands of liquor may be
16 sold and to make all necessary rules, under Section
17 16-1-303, MCA, for the proper administration of the
18 monopoly; and

19 WHEREAS, the Department of Revenue adheres to the
20 policies of marking up different kinds of liquors at
21 differing percentages and of establishing minimum prices for
22 various kinds of liquors; and

23 WHEREAS, the markups and minimum price policies of the
24 Department of Revenue are not supported by any stated
25 justification and have not been published in the Montana

APPENDIX I

SAMPLE -- JOINT RESOLUTION

(Amending a Rule of the Montana Administrative Code)

1 JOINT RESOLUTION NO. _____

2 INTRODUCED BY _____

3

4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING AN
6 AMENDMENT TO RULE 42-2.5(2)-S60730 OF THE MONTANA
7 ADMINISTRATIVE CODE TO PERMIT A HUSBAND AND WIFE FILING
8 SEPARATE INCOME TAX RETURNS TO SPLIT THE INCOME FROM A JOINT
9 VENTURE OR PARTNERSHIP ACTIVELY MANAGED BY BOTH.

10

11 WHEREAS, income tax regulations promulgated by the
12 Department of Revenue now provide that net income from a
13 business operated jointly by a husband and wife, such as a
14 farm or a ranch, is the income of only one spouse unless the
15 spouses file as a partnership on their federal income tax
16 return; and

17 WHEREAS, this rule is arbitrary in that it obliges
18 married taxpayers to forego either the federal tax
19 advantages of joint filing or the state tax advantages of
20 separate filing; and

21 WHEREAS, this rule is against public policy in that it
22 fails to recognize the equal contributions of both spouses
23 to the management of many farms, ranches, small businesses,
24 and firms.

25

1 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
2 OF REPRESENTATIVES OF THE STATE OF MONTANA:

3 That the Department of Revenue is directed to proceed
4 within 30 days to amend Rule 42-2.6(2)-S60730 of the Montana
5 Administrative Code to delete the requirement that spouses
6 splitting income from a joint venture must organize a bona
7 fide partnership and file federal income tax returns as such
8 and to provide that spouses may allocate the income from a
9 jointly managed business according to their respective
10 contributions of time, labor, and capital to the business.

-End-

APPENDIX J
SAMPLE -- SIMPLE RESOLUTION1 HOUSE RESOLUTION NO. _____

2 INTRODUCED BY _____

3

4 A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF
5 MONTANA THAT WHENEVER PRACTICABLE ITS MEMBERS SHALL SALVAGE
6 USED PAPER FOR RECYCLING.

7

8 WHEREAS, the Legislature and offices of state
9 government use large amounts of paper each year; and10 WHEREAS, this Legislature, this state, and this nation
11 are concerned about the shortage of paper; and12 WHEREAS, the efficient use of forest products is of
13 great concern to all our citizens; and14 WHEREAS, this House of Representatives is desirous of
15 making a concerted effort toward a continual program of
16 salvaging paper products for reuse; and17 WHEREAS, a new industry in the state of Montana has
18 indicated its willingness to cooperate with an immediate
19 program of recycling.

20

21 NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF
22 REPRESENTATIVES OF THE STATE OF MONTANA:23 That the members of this House of Representatives shall
24 immediately institute a used-paper recycling program by
25 depositing used paper in the proper receptacles.

1 BE IT FURTHER RESOLVED, that the Chief Clerk of the
2 House shall contact the proper authorities and make all
3 arrangements necessary to carry out this program.

-End-

APPENDIX K
SAMPLE -- BOND VALIDATING ACT

1 BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT VALIDATING BONDS AND
5 OTHER INSTRUMENTS OR OBLIGATIONS ISSUED BY PUBLIC BODIES OF
6 THIS STATE PRIOR TO THE EFFECTIVE DATE OF THIS ACT AND
7 RATIFYING ALL RELATED ACTIONS TAKEN BY SUCH PUBLIC BODIES."

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Short title. This [act] may be cited as
11 "The Bond Validating Act".

12 Section 2. Definitions. As used in this [act], the
13 following definitions apply:

14 (1) "Public body" means any political or governmental
15 subdivision of the state of Montana and includes but is not
16 limited to a county, city, town, or school district.

17 (2) "Bonds" includes all instruments of indebtedness,
18 the borrowing of money, or a charge or encumbrance on
19 specific revenue or property of a public body.

20 Section 3. Validation. All bonds issued by any public
21 body of this state and related proceedings, regardless of
22 any defects in such proceedings, are validated. Bonds of a
23 public body issued under the authority of proceedings taken
24 prior to [the effective date of this act] are valid whether
25 issued before or after such date.

1 Section 4. Saving clause. This [act] does not apply to
2 any action instituted before [the effective date of this
3 act] in which the validity of certain proceedings or bonds
4 is at issue.

-End-

APPENDIX L
SAMPLE -- REFERENDUM

1 BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION
5 16-3-301, MCA, TO RAISE THE LEGAL DRINKING AGE TO 19 AND
6 PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE ELECTORS
7 OF THE STATE OF MONTANA."

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 16-3-301, MCA, is amended to read
11 as follows:

12 16-3-301. Unlawful purchases, sales, or deliveries.
13 (1) It shall be unlawful for a licensed retailer to purchase
14 or acquire beer from anyone except a brewer or wholesaler
15 licensed under the provisions of this code.

16 (2) It shall be unlawful for any licensee, his or her
17 employee or employees, or any other person to sell, deliver,
18 or give away or cause or permit to be sold, delivered, or
19 given away any alcoholic beverage to:

20 (a) any person under the age of ~~to~~ 19 years;
21 (b) any intoxicated person or any person actually,
22 apparently, or obviously intoxicated.

23 (3) Any minor or other person who knowingly
24 misrepresents his or her qualifications for the purpose of
25 obtaining an alcoholic beverage from such licensee shall be

1 equally guilty with said licensee and shall upon conviction
2 thereof be subject to the penalty provided in 45-5-624;
3 provided, however, that nothing herein contained shall be
4 construed as authorizing or permitting the sale of an
5 alcoholic beverage to any person in violation of any federal
6 law.

7 (4) It shall be further mandatory under the provisions
8 of this code that all licensees display in a prominent place
9 in their premises a placard as issued by the department
10 stating fully the consequences for violations of the
11 provisions of this code by persons under the age of ~~is~~ 19
12 years.

13 Section 2. Effective date. Section 1 of this act is
14 effective on January 1, 1980.

15 Section 3. Submission to electorate. The question of
16 whether this act will become effective shall be submitted to
17 the electors of the state of Montana at the general election
18 to be held November 2, 1978, by printing on the ballot the
19 full title of this act and the following:

FOR raising the legal drinking age to 19.

AGAINST raising the legal drinking age to 19.

-End-

APPENDIX M
SAMPLE BILL FORM

BILL IDENTIFICATION
(Designation & No.)

1 BILL NO. _____

(Sponsor)

2 INTRODUCED BY _____

3

TITLE

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE A SAMPLE BILL
5 FOR THE BILL DRAFTING MANUAL; AMENDING SECTION 2-17-301,
6 MCA; RENUMBERING AND AMENDING SECTION 1-2-108, MCA;
7 RENUMBERING SECTION 94-5-202, MCA; AND REPEALING SECTIONS
8 27-18-101 THROUGH 27-18-112, 94-5-102, AND 94-5-601, MCA."

9

PREAMBLE
(optional - rarely used)

10 WHEREAS, it is necessary to draft a composite bill
11 containing unrelated sections in order to provide examples
12 of various bill parts and the format used in drafting,
13 amending, or repealing statutes.

14

ENACTING CLAUSE
(mandatory)

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Short title. This [act] may be cited as
17 "The Bill Sample Act of 1979".

18 Section 2. Purpose. The purpose of this [act] is to
19 create a bill, the structure of which may be used as an
20 example of correct style and form by attorneys and other
21 bill drafters.

22 Section 3. Definitions. As used in this [act], the
23 following definitions apply:

24 (1) "Code" means the Montana Code Annotated.

25 (2) "Recodify" means to compile, arrange, rearrange,

(Basic Provisions)
(Entire bill all new
material)
(Amendatory material)

(Designating new
material when
mixed with **NEW
MATERIAL**
amendatory material)

(Assigning a new section
number) (Discouraged -
use only if necessary)

(Outline form)

- 1 and prepare the code for republication.
- 2 Section 4. Department head. Each department head shall
- 3 supervise the functions vested in his department.
- 4 Section 5. Section 2-17-301, MCA, is amended to read
- 5 as follows:
- 6 "2-17-301. Supervision of mailing facilities. The
- 7 ~~controller~~ department shall maintain and supervise the
- 8 central mailing facilities."
- 9 Section 6. Code commissioner office created. The
- 10 office of code commissioner is created within the legal
- 11 services division of the legislative council.
- 12 Section 7. There is a new MCA section numbered
- 13 1-11-102 that reads as follows:
- 14 1-11-102. Name of recodification. The recodified laws
- 15 shall be known as the "Montana Code Annotated".
- 16 Section 8. Sale or donation of new drug unlawful --
- 17 exceptions. No person may sell, offer for sale, hold for
- 18 sale, or give away a new drug unless:
- 19 (1) a federal application has been approved;
- 20 (2) the drug is not subject to federal law; or
- 21 (3) an application has been filed with the department
- 22 containing:
- 23 (a) a summary of the conclusions drawn from
- 24 investigation of the drug;
- 25 (b) a list of the substances of which the drug is

(Outline form
continued)

1 composed; and
2 (c) a sample of the label proposed as identification
3 for the drug, which may not:
4 (i) be false or misleading; or
5 (ii) contain a name used by a registered drug unless:
6 (A) permission has been granted and a license has been
7 obtained; or
8 (B) the name is for temporary use.

(Renumber and amend)

9 Section 9. Section 1-2-108, MCA, is renumbered
10 5-11-108 and is amended to read as follows:

11 "1-2-108 5-11-108. Reference to other titles,
12 chapters, or sections within the codes. A title-chapter-or
13 statute code-section which refers to a title, chapter, or
14 section number without further identification or attribution
15 ~~shall-be is~~ presumed, unless the context clearly indicates
16 otherwise, to refer to a title, chapter, or section of the
17 Montana Code Annotated."

(Renumber)

18 Section 10. Section 94-5-202, MCA, is renumbered
19 30-10-708.

(Penalty)

20 Section 11. Penalty. A person convicted of violating
21 45-2-102 shall be fined not more than \$500 or be imprisoned
22 in the county jail for a term no longer than 6 months or
23 both.

(Saving clause)

24 Section 12. Saving clause. This [act] does not affect
25 rights and duties that matured, penalties that were

1 incurred, or proceedings that were begun before [the
2 effective date of this act].

3 Section 13. Severability. If a part of this act is
4 invalid, all valid parts that are severable from the invalid
5 part remain in effect. If a part of this act is invalid in
6 one or more of its applications, the part remains in effect
7 in all valid applications that are severable from the
8 invalid applications.

9 OR

10 Section 13. Nonseverability. It is the intent of the
11 legislature that each part of this act is essentially
12 dependent upon every other part; and if one part is held
13 unconstitutional or invalid, all other parts are invalid.

14 Section 14. Repeater. Sections 27-18-101 through
15 27-18-112, 94-5-102, and 94-5-601, MCA, are repealed.

16 Section 15. Effective date. This act is effective on
17 its passage and approval.

18 OR

19 Section 15. Effective date. This act is effective
20 December 1, 1979.

-End-

(Severability clause)

(Nonseverability clause)

(Repealer)

(Effective date)
(Discouraged - use
only as emergency)

APPENDIX N
CLERICAL INSTRUCTIONS -- BILL SAMPLE

(Centered in 60-space
line length)

(Centered - 2nd
numbered line)

'two double spaces)

'Title begins at left
margin -- line 4)

'two double spaces)

'Enacting clause --
(all in upper case)

'Indent 5 spaces)-----8----

1 BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE SALES OF

5 NEW DRUGS; AMENDING SECTION 50-31-105, MCA."

6

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8 Section 1. Sale or donation of new drug unlawful --

9 exceptions. No person may sell, offer for sale, hold for

10 sale, or give away a new drug unless:

11 (1) a federal application has been approved;

12 (2) the drug is not subject to federal law; or

13 (3) an application has been filed with the department

14 containing:

15 (a) a summary of the conclusions drawn from

16 investigation of the drug;

17 (b) a list of the substances of which the drug is

18 composed; and

19 (c) a sample of the label proposed as identification

20 for the drug, which may not:

21 (i) be false or misleading; or

22 (ii) contain a name used by a registered drug unless:

23 (A) permission has been granted and a license has been

24 obtained; or

25 (B) the name is for temporary use.

A LEGISLATIVE
HIGHLIGHT -- HALLUCINOGENIC DRUGS

1 **Section 2. Nonapplication of preceding section.**

2 Section [1] does not apply to any drug subject to 50-31-102
3 if the drug:

4 (1) is commercially sold in the United States; and
5 (2) has been tested by the department.

6 **Section 3. Section 50-31-105, MCA, is amended to read**
7 as follows:

8 **"50-31-105. Hallucinogenic drugs -- prohibitions. It**
9 **shall be unlawful for any person to manufacture any an**
10 **hallucinogenic drug."**

-End-

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